

## 815 CMR SERIES: COMPTROLLER'S DIVISION

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### 815 CMR 2.00: GRANTS AND SUBSIDIES

#### Section

- 2.01: Purpose, Application, and Authority
- 2.02: Definitions
- 2.03: Subsidies
- 2.04: Grants
- 2.05: Contractual Requirements for Grants and Grant Payments
- 2.06: Severability

#### 2.01: Purpose, Application and Authority

(1) Purpose. 815 CMR 2.00 establishes rules and procedures to assist departments with the administration of Grants and Subsidies.

(2) Application. 815 CMR 2.00 applies to all state departments that administer Grants and Subsidies, including agencies, subdivisions, offices, boards, commissions or institutions of the Executive Department, including the Institutions of Higher Education, the Judicial and Legislative Branches and the Constitutional Offices. 815 CMR 6.00 governs Interdepartmental business between two or more state departments. 801 CMR 21.00 governs procurements and expenditures for commodities and services, including human and social services. The Office of the Comptroller will interpret 815 CMR 2.00 and take any actions necessary to carry out the purposes of 815 CMR 2.00, including issuing additional policies, procedures and forms for department use. Departments should verify the Legislative Authorization and account type of proposed funding, and the organizational structure of intended recipients, to determine if expenditures may be properly made as Grants or Subsidies under 815 CMR 2.00.

(3) Authority. 815 CMR 2.00 is issued pursuant to M.G.L. c. 7A, § 7, and St. 1986, c. 206, § 17.

#### 2.02: Definitions

Grant - Discretionary and non-discretionary (designated) funds of financial assistance provided under contractual terms between a Grantor department and a Grantee to assist the Grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the Grantor department's Legislative Authorization. Grants to non-Public Entities may be made from trust and federal funds but may not be made from appropriated state funds absent specific Legislative Authorization stating that Grants or financial assistance may be made from the appropriated state funds and that

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recipients may include non-Public Entities.

Grant Application - a document distributed by a department which is used to determine eligibility of a proposed recipient of a Grant of discretionary funds.

Grantee - A public or non-Public Entity selected as a recipient of Grant.

Incidental Grant - A one-time Grant with a total dollar value that does not exceed the amount established by the Office of the Comptroller.

MMARS - The State accounting system known as the Massachusetts Management Accounting and Reporting System.

Legislative Authorization - General and special laws including statutes and annual appropriation acts.

Public Entity - a unit of state or local government including a county, municipality, local public authority, school district, special district, district commission, regional government, any agency or instrumentality of government, and state authorities as defined in M.G.L. c. 29, § 1. The Office of the Comptroller identifies Public Entities in the MMARS vendor file (VEND) with a "G" in the organizational field.

State - The Commonwealth of Massachusetts.

Subsidy - Non-discretionary funds appropriated by the Legislature to be made either as a direct payment of a specified amount to a designated recipient entity, and are not specified as a "Grant", "contract" or "for a program", or are designated specifically as direct payments through "Subsidies" or a "Subsidy program".

Subsidy Agreement - A form issued or approved by the Office of the Comptroller that may be used by departments when making payments of Subsidies.

### 2.03: Subsidies

(1) In order pay a Subsidy, a department must have specific Legislative Authorization that either:

- (a) mandates a direct, non-discretionary "payment" of a specified amount to a designated recipient entity; or
- (b) directs payments to be made as "Subsidies" or as a "Subsidy program".

(2) A Subsidy shall not include a Legislatively Authorized amount of funds to be expended for or on behalf of a specified entity that is designated to be made as a "Grant", "contract" or "for a program". Legislative Authorization that designates a

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specified amount of funds, or an amount “not to exceed” a specified amount, to be expended for or on behalf of designated entity, but does not clearly specify that the amount is to be made as a direct “payment” shall be interpreted to be either a “Grant” or a “contract” that has been exempted from competitive procurement requirements. These expenditures shall be made in accordance with relevant applicable general and special laws and regulations.

(3) Departments must execute a Subsidy Agreement with a Subsidy recipient and maintain a copy of the Legislative Authorization for the subsidy with the Subsidy Agreement for filing and recording keeping purposes.

### 2.04: Grants

Grants must comply with the following conditions:

- (1) A department must have Legislative Authorization to award Grants or provide financial assistance.
- (2) A department may not use a Grant to procure or expend funds for commodities or services, including human and social services, for or on behalf of the department.
- (3) Grants to Public Entities may be made from all sources of funds.
- (4) Unless otherwise provided by law, Grants to non-Public Entities are limited to trust and federal funds (MMARS account types 03 and 04).
- (5) Grants may be made from appropriated state funds (maintenance funds, MMARS account type 01, or capital funds, MMARS account type 02) to non-Public Entities only if the department has specific Legislative Authorization stating that Grants or financial assistance may be made from the appropriated state funds and that recipients may include non-Public Entities. If the Legislative Authorization for a Grant or financial assistance is silent as to the type of eligible recipients, the presumption will be that the intended recipients will be Public Entities.
- (6) Grants of non-discretionary funds (designated) shall be made to the recipients identified in the department's Legislative Authorization, trust language or a federal grant.
- (7) Grants of discretionary funds shall be disbursed through an open and public competitive process, as determined appropriate by the department, and in accordance with the department's Legislative Authorization, trust language or a federal grant. This process should include, but is not limited to the following:
  - (a) a Grant Application, or other disbursement process, for each Grant or Grant

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program which complies with all relevant state or federal laws and regulations and federal grant requirements. Grantees receiving federal grant funds will be considered sub-recipients for federal grant purposes and will be required to comply with applicable federal requirements, including but not limited to sub-recipient audit requirements under OMB Circular A-133.

(b) the Grant Application, or other disbursement process, should identify the purpose, scope, anticipated budget and duration of the Grant or Grant program, the evaluation criteria that will be used for Grantee selection and any information that a Grantee must provide to be considered eligible for a Grant;

(c) some form of public notice or notification of the availability of a Grant or Grant Program;

(d) notice to all entities responding to the Grant Application, or otherwise reviewed, of their selection or non selection for a Grant;

(e) maintenance of a Grant file with complete records of a Grant or Grant Program including Grant Applications, or other disbursement documents, contractual documents and Grant reports.

(8) Incidental Grants, not to exceed an amount established by the Office of the Comptroller, may be awarded in writing, without the open and public competitive process outlined in 815 CMR 2.04(7) and the contractual requirements outlined in 815 CMR 2.05(1) through (4), provided that the Grants meet all other requirements of 815 CMR 2.00.

### 2.05: Contractual Requirements for Grants and Grant Payments

(1) The identification of a Grantee in a notice or a letter of a Grant award creates no contractual obligation for a department or the State. A Department can not issue Grant payments until the contractual documents outlined in 815 CMR 2.05 (2) or (3) are properly executed and filed in accordance with policies and procedures issued by the Office of the Comptroller.

(2) Commonwealth Terms and Conditions Contract and Standard Contract Form  
An authorized signatory of a Grantee must execute a Commonwealth Terms and Conditions Contract and a Standard Contract Form issued by the Office of the Comptroller for Grants awarded under 815 CMR 2.00. The Commonwealth Terms and Conditions Contract will be incorporated by reference into any Standard Contract Form executed by the Grantee and any department. The Standard Contract Form and attachments must identify the amount, duration and scope of the Grant, and applicable fiscal or programmatic reporting requirements for documenting Grant expenditures or performance.

(3) Master Grant Agreement. The Master Grant Agreement for Local Governmental Entities and the Master Grant Agreement Authorization Form

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currently in place may continue to be used in lieu of the Commonwealth Terms and Conditions and Standard Contract Form until June 30, 1998 when the Master Grant Agreement and Authorization Form will expire and be replaced by the Commonwealth Terms and Conditions and Standard Contract Form.

(4) Grant Effective Start Date. Notwithstanding verbal representations by the parties, or an earlier start date stated in the Standard Contract Form, the effective start date of a Grant shall be the latest of the following dates:

- (a) the date the Standard Contract Form was executed by an authorized signatory of the Grantee;
- (b) the date the Standard Contract Form was executed by an authorized signatory of the department;
- (c) the date the Contract received Secretariat or other approvals required by law or regulation, if applicable; or
- (d) a later date specified in the Standard Contract Form.

(5) Grant Payments and Compensation. A Grantee shall be compensated in accordance with the specific terms and conditions of a Grant identified in the Standard Contract Form. Unless otherwise provided by law, all Grant payments are subject to appropriation pursuant to M.G.L. c. 29, § 26, or the availability of sufficient non-appropriated funds for the purposes of the Grant, and shall be subject to intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. A department is under no legal obligation to compensate a Grantee, or to obtain additional funding, for any costs or other commitments which are outside of the scope of an executed Standard Contract Form.

### 2.06: Severability

If any provision of 815 CMR 2.00 is found to be illegal, unenforceable or void, then departments and Grantees shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

## REGULATORY AUTHORITY

815 CMR 2.00: M.G.L. c. 7A, § 7, and St. 1986, c. 206, § 17.

Effective 9/5/97

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### 815 CMR 3.00: READY PAYMENT SYSTEM

#### Section

- 3.01: Application, Purpose, Scope and Authority
- 3.02: Definitions
- 3.03: Conditions for Using the Ready Payment System for Contract Payments
- 3.04: Suspension of the Use of the Ready Payment System for Contract Payments
- 3.05: Termination of the Use of the Ready Payment System for Contract Payments
- 3.06: Disputes
- 3.07: Waivers

#### 3.01: Application, Purpose, Scope and Authority

(1) Application. 815 CMR 3.00 shall apply to any Department of the State that makes payments under the Ready Payment System through the state accounting system, known as the Massachusetts Management and Accounting and Reporting System (MMARS). The Comptroller may issue additional policies, procedures or guidelines concerning the application of 815 CMR 3.00.

(2) Purpose. The purpose of the Ready Payment System is to establish an alternative payment mechanism which enables a Department to make predictable, recurring contract payments for providers of social, educational and rehabilitative services. The Ready Payment System is appropriate for social, educational and rehabilitative service contracts which have a predictable, recurrent and regular service delivery schedule. The purpose of 815 CMR 3.00 is to provide all Departments of the State with uniform rules and procedures to ensure that payments made under the Ready Payment System are authorized and properly accounted for in a timely manner. The Ready Payment System is designed to be used in accordance with other regulations, including, but not limited to, 808 CMR 1.00.

(3) Scope. 815 CMR 3.00 applies to any payments made by a Department through the Ready Payment System on MMARS.

(4) Authority. 815 CMR 3.00 is adopted under the authority of M.G.L. c. 29, § 23A. 815 CMR 3.00 shall be effective on April 10, 1995, and shall supersede and replace the regulations formerly under the same title.

#### 3.02: Definitions

Base Payments. The computed recurring payment amount to be disbursed on a semi-monthly, bi-weekly, weekly or other regular interval, to a Contractor in accordance with 815 CMR 3.00 and the terms and conditions of a Contract executed

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by the Contractor and a Department.

Contract. For the purpose of 815 CMR 3.00, a legally enforceable agreement executed by a Department and a Contractor in accordance with all relevant general and special laws and regulations.

Contractor. A corporation, individual, partnership or other entity engaged in the business of supplying social, educational or rehabilitative services. For the purpose of 815 CMR 3.00 "eligible organizations" and "providers" as referenced in M.G.L. c. 29, § 23A shall be referred to as "Contractors".

Department. All Departments of the State, including offices, boards, commissions or institutions of the Executive Department, the institutions of Higher Education, the Judicial and Legislative Branches and the Constitutional offices. Departments are recognized in the Massachusetts Management Accounting and Reporting System (MMARS).

Department Head. The head of any Department, including the secretary of an Executive Office when the secretary is exercising authority over an executive office as a Department head.

Expenditure Classification Handbook. A schedule of subsidiaries and object codes issued by the Office of the Comptroller and authorized by M.G.L. c. 29, § 7 to be used in accounting for all authorized pre-encumbrances, encumbrances and expenditures. The Expenditure Classification Handbook identifies the object codes that may be appropriate for use of the Ready Payment System for Contract payments. Discrepancies as to the appropriate subsidiary or object code for a Contract shall be determined by the Office of the Comptroller

Fiscal Year. The period beginning on July 1 and ending on June 30th of each year, as defined by M.G.L. c. 4, § 7.

MMARS. The Massachusetts Management Accounting and Reporting System established by the Office of the Comptroller pursuant to M.G.L. c. 7A, § 7.

Office of the Comptroller. The Department established by M.G.L. c. 7A whose responsibilities include the design and system implementation of the Ready Payment System on MMARS.

Provider. A corporation, individual, partnership or other entity engaged in the business of supplying social, educational or rehabilitative services. For the purpose of 815 CMR 3.00, "eligible organizations" and "providers" as referenced in M.G.L. c. 29, § 23A shall be referred to as "Contractors".

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Ready Payment System. An alternative payment mechanism in MMARS that enables a Department to make predictable and recurring contract payments to providers of social, educational and rehabilitative services. The Ready Payment System is appropriate for social, educational and rehabilitative service contracts which have a predictable, recurrent and regular service delivery schedule.

Secretariat. Any of the executive offices established by M.G.L. c. 6A or c. 7, including any Department, agency, office, board, commission or institution or other entity within an executive office. For the purposes of 815 CMR 3.00, "Secretariat" shall have the same meaning as "Executive Office".

Services. Social, educational and rehabilitative services which have a predictable, recurrent and regular service delivery schedule. Services are provided under a Contract with a Department of the State for a program, or a component of a program, for the benefit of the Department's clients. Services may include, but are not limited to, residential, housing and homelessness prevention, child care, day activity, employment and training, case management, counseling, homemaker, family planning, family support and protective services, alcohol and substance abuse education, referral and treatment, student and client transportation programs and other educational service programs. The Expenditure Classification Handbook issued by the Office of the Comptroller identifies the expenditure object codes that may be appropriate for use of the Ready Payment System for Contract payments. Discrepancies as to the appropriate subsidiary or object code for a Contract shall be determined by the Office of the Comptroller.

State. Commonwealth of Massachusetts.

### 3.03: Conditions for Using the Ready Payment System for Contract Payments

A Contractor and a Department must fulfill the following requirements in order to use the Ready Payment System for Contract payments. Satisfaction of these requirements, during the life of the Contract, shall be determined by the Department contracting for services with the Contractor. These requirements must be met for each Contract to be paid using the Ready Payment System.

(1) Social, Educational or Rehabilitative Service Provider. The Contractor must be in the business of providing social, educational or rehabilitative services;

(2) Contract on file with the Office of the Comptroller. A Contract for the provision of social, educational or rehabilitative services, must be executed by the Contractor and the contracting Department in accordance with all relevant general and special laws and regulations, and filed with the Office of the Comptroller in



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accordance with the policies and procedures for filing Contracts as prescribed by that Office. The Contract must include the following mandatory sections:

- (a) Certification of Incorporation or License to do Business. A certification, or other documentation, evidencing that the Contractor is properly incorporated with the Office of the Secretary of State of the Commonwealth, if the Contractor is a Commonwealth corporation; or, if the Contractor is not a Commonwealth corporation, that the Contractor is properly licensed to do business in the Commonwealth;
- (b) Certification of Compliance with Laws. A certification that the Contractor will comply with all applicable state and federal general and special laws and regulations governing the Contractor's performance under the Contract and any other provisions specified in the Contract;
- (c) Ready Payment Billing and Payment Schedule. The Contract must include the following:
  - 1. The Contract must indicate that the Contractor and the Department have agreed, either at the time of entering into the Contract, or by subsequent amendment to the Contract, that Contract payments will be made using the Ready Payment System. Contract services must have a predictable, recurrent and regular delivery schedule that is compatible with the billing and payment cycle of recurring payments offered by the Ready Payment System. The Department shall determine whether or not the Ready Payment System is the most efficient and appropriate payment mechanism for Contract payments;
  - 2. The maximum obligation for each fiscal year of the Contract; and
  - 3. The anticipated payment schedule for Ready Payments (semi-monthly, bi-weekly, weekly or other schedule).
- (3) Additional Department Requirements. In addition to the requirements outlined in 815 CMR 3.03(1), and (2) the Contractor's participation in the Ready Payment System will be subject to the Contractor's compliance with any additional requirements specified by the Department in the Contract.
- (4) Invoice Submission and Reconciliation of Ready Payments.
  - (a) Contractor Submissions.
    - 1. The Contractor is required to submit monthly invoices and supporting documentation to the Department in accordance with the terms and conditions of the Contract. The invoices and supporting documentation must be accurate, complete and sufficiently detailed to substantiate any claim for payment. Unless a different period is specified in the Contract, the Contractor shall submit the invoices and supporting documentation on or before the tenth of each month following service delivery. The Contractor's failure to submit timely invoices and supporting documentation may result in the suspension of the use of the Ready Payment System for Contract payments pursuant to 815 CMR 3.04.

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2. The invoices submitted by the Contractor shall total at least 75% of the base payments received by the Contractor for the previous service delivery month.
3. Unless otherwise specified in the Contract, the Contractor shall be responsible for the prompt return or reimbursement of any overpayments made by the Department within seven calendar days of the Department's written request. Overpayments to the Contractor during any state fiscal year may not be retained by the Contractor to offset anticipated payments by the Department during a subsequent fiscal year.

### (b) Department Adjustments to Base Payment Amount and Reconciliation of Ready Payments.

1. The Ready Payment System authorizes automated payments during each month of the Contract in accordance with the maximum obligation, the billing schedule and the base payment amount identified in the Contract. The Department may adjust the base payment amount to reflect the level of services actually delivered by the Contractor. The Department shall notify the Contractor of base payment adjustments. Base payment adjustments shall not require a formal Contract amendment or approval by the Office of the Comptroller.
2. The Department is responsible for the monthly reconciliation of ready payments made to the Contractor. The Department shall compare the supporting documentation provided by the Contractor for the level of services actually performed with the total amount of base payments made to the Contractor during the preceding service delivery month. The Department shall make any necessary adjustments to future Contract payments, including adjustments to the base payment amount of the Contract, to reflect the monthly reconciliation of ready payments. The Department is also responsible for final reconciliation of ready payments during the last month of each state fiscal year and the last month of the Contract if the Contract terminates prior to the end of a fiscal year. The Department shall take all necessary actions to update MMARS tables or complete MMARS transactions to complete the required reconciliation and adjustments to Contract payments in accordance with policies and procedures issued by the Office of the Comptroller.

### 3.04: Suspension of the Use of the Ready Payment System for Contract Payments

The use of the Ready Payment System for Contract payments is conditioned upon the Contractor's provision of services and performance of other requirements in accordance with the terms of the Contract.

- (1) Grounds for Suspension. A Department may temporarily suspend the use of

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the Ready Payment System for Contract payments at any time a Contractor breaches a material condition of the Contract or fails to perform or timely fulfill the terms of the Contract. Grounds for suspension shall include, but shall not be limited to, non-compliance with Contract requirements or the failure to perform or timely fulfill requirements of performance, billing, reporting, audit resolution and corrective action, annual Contract renewal and pre-qualification requirements.

(2) Written Notice of Suspension and the Effective Date of Suspension.

(a) If grounds for suspension exist, as described in 815 CMR 3.04(1), the Department may immediately suspend the use of the Ready Payment System for Contract payments, and then notify the Contractor of the suspension in accordance with 815 CMR 3.04(2)(b). In the alternative, the Department may notify the Contractor of the grounds for suspension, in accordance with 815 CMR 3.04(2)(b), and provide the Contractor with an opportunity to cure these deficiencies prior to the effective date of suspension.

(b) The Department shall notify the Contractor in writing whenever the Department has suspended, or will suspend, the use of the Ready Payment System for Contract payments. The notice must include the grounds for the suspension, as described in 815 CMR 3.04(1), and the effective date of suspension.

(3) Period of Suspension. The period of suspension of the use of the Ready Payment System for Contract payments shall be determined by the Department in accordance with the terms of the Contract. Unless otherwise specified in the Contract, the period of suspension shall continue until the Contractor has cured the Contract deficiencies to the Department's satisfaction. Absent a provision in the Contract which establishes a different period, the period of suspension of the use of the Ready Payment System for Contract payments shall not exceed 60 calendar days. If the Contractor fails to cure the Contract deficiencies within this period, the Department may terminate the use of the Ready Payment System for Contract payments for a period of two years pursuant to 815 CMR 3.05.

(4) Payments During Suspension. In accordance with the terms of the Contract, the Department shall determine whether to hold payments to a Contractor during the period of suspension, or to continue payments through a Payment Voucher mechanism.

(5) Removal of Suspension. Unless otherwise specified in the Contract, the Department shall reinstate the use of the Ready Payment System for Contract payments within 15 business days following the Contractor's cure of the Contract deficiencies which resulted in the suspension. The Contractor must cure the Contract deficiencies to the Department's satisfaction. The Departments shall notify the Contractor in writing of the effective date of reinstatement of the use of the

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Ready Payment System for Contract payments. The Contractor shall comply with any additional Department requirements necessary to enable the Department to reinstate the use of the Ready Payment System for Contract payments.

### 3.05: Termination of the Use of the Ready Payment System for Contract Payments

The termination of the use of the Ready Payment System for Contract Payments may be invoked in rare and severe circumstances which would normally warrant the Department's termination of the Contract with the Contractor. The Department may terminate the use of the Ready Payment System for Contract payments regardless of whether or not the Department chooses to terminate the Contract.

(1) Grounds for Termination. The Department may terminate the use of the Ready Payment System for Contract payments whenever:

- (a) the Contractor has demonstrated bad faith in Contract performance or an intentional disregard of the Contractor's duties or responsibilities under a Contract including, but not limited to, fraud, gross negligence, reckless or intentional misconduct, willful misrepresentations or any unlawful act in the performance, billing, reporting or other requirements of the Contract;
- (b) the use of the Ready Payment System for Contract payments has been suspended by the Department pursuant to 815 CMR 3.04, and the Contractor has failed or refused to cure Contract deficiencies for a period of 60 calendar days, or such other period of time as specified in the Contract;
- (c) the Contractor has been subject to continual or frequent suspensions from the use of the Ready Payment System for Contract deficiencies during the Contract period, pursuant to 815 CMR 3.04, and the Department determines that, due to the Contractor's continuing intentional disregard of its duties or responsibilities under the Contract, the Ready Payment System is no longer an appropriate payment mechanism for Contract payments under the Contract;

(2) Written Notice of Termination. A Department must notify a Contractor in writing of the termination of the use of the Ready Payment System for Contract payments. The written notification must include the grounds for termination, as described in 815 CMR 3.05(1), and the effective date of the termination. A copy of the written notice of termination shall also be sent to the Department's Secretariat and the Office of the Comptroller. The Department should also send a copy of the notice of termination to any other Department or Secretariat that the Department has reason to know is also contracting with the Contractor.

(3) Payments During Period of Termination. Provided the Contract has not been terminated by the Department, the Department may continue to make Contract payments through a Payment Voucher mechanism during the period of termination.

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(4) Scope of Termination. The termination of the use of the Ready Payment System for Contract payments shall be limited to the Contract giving rise to the termination, unless a Department Head or Secretary determines that the egregious nature of the grounds for the termination warrant an extension of this termination to other contracts that the Contractor has with the Department or other Departments within the Secretariat. The Department Head or the Secretary shall provide written notice of this determination to the relevant contracting Departments. The contracting Departments shall provide the Contractor with written notice, in accordance with 815 CMR 3.05(2), of the extension of the termination of the use of the Ready Payment System for each relevant contract within the Department.

(5) Two Year Period of Termination from Participation. The termination of the use of the Ready Payment System for Contract payments shall continue for two years from the effective date of the termination, pursuant to M.G.L. c. 29, § 23A. At the end of the two year termination period a Contractor may request the use of the Ready Payment System for Contract payments pursuant to the provisions of 815 CMR 3.03.

### 3.06: Disputes

All Contract negotiations and disputes between a Department and a Contractor shall be resolved by the Department with assistance, if necessary, from the Department Head or the Department's Secretariat. The Department and the Contractor must make every possible effort to resolve the dispute within 30 days using all appropriate mechanisms, but in no event shall this resolution period extend beyond the 30th day of June in any fiscal year. Any dispute between a Department and a Contractor that involves the application or interpretation of 815 CMR 3.00, the Department Head or Secretary may seek assistance from the General Counsel of the Office of the Comptroller to assist in the resolution of the dispute or to provide a determination as to the application or interpretation of 815 CMR 3.00. A Contractor may not seek direct assistance from the Office of the Comptroller.

### 3.07: Waivers

Departments requesting an exception from any term, condition, rule or regulation as prescribed in 815 CMR 3.00 shall submit a written waiver request to the General Counsel of the Office of the Comptroller. The waiver request shall contain relevant documentation justifying a deviation from applicable policies and procedures, and must be executed by an authorized signatory of the Department. Any determination from the Office of the Comptroller shall be final.

## REGULATORY AUTHORITY

815 CMR SERIES: COMPTROLLER'S DIVISION

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815 CMR 3.00: M.G.L. c. 29, § 23A.

Effective 12/29/95

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### 815 CMR 4.00: LATE PENALTY INTEREST

#### Section

4.01: Application, Purpose, Scope and Authority

4.02: Definitions

4.03: Contractual Requirements

4.04: Late Penalty Encumbrance

4.05: Bill Paying Procedures

4.06: Late Penalty Interest Procedures

4.07: Desk Review

#### 4.01: Applications Purpose Scope and Authority

(1) The purpose of 815 CMR 4.00 is to provide all departments of the Commonwealth with rules and procedures to govern the payment of interest to commercial vendors when departments do not make payment by the required contractual payment date for goods or services delivered.

(2) 815 CMR 4.00 applies to goods and/or services delivered and accepted after March 24, 1988.

(3) All vendors of the Commonwealth except; Employees (including "03" employees), recipients of public assistance, cities and towns and other public instrumentalities designated as public agencies on the Commonwealth's vendor file, are eligible for late penalty interest in compliance with 815 CMR 4.00.

(4) 815 CMR 4.00 *et. seq.* sets forth the respective responsibilities of the vendors, the departments and the Office of the Comptroller regarding the payment of the Commonwealth's obligations.

(5) It is the responsibility of all departments to establish encumbering and bill-paying procedures consistent with their internal control policies and in compliance with the MMARS Policy and Procedures Manual, as amended, which will result in the timely payment of all properly submitted invoices after the goods and/or services have been received.

(6) 815 CMR 4.00 *et seq.* is adopted under the authority of M.G.L. c. 7A, § 8, c. 29 §§ 20C, 29C.

#### 4.02: Definitions

(1) Contract - A legally enforceable agreement between a vendor and a department

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for the provision of goods and/or services in consideration of compensation to be paid by the Commonwealth, executed in the name of the Commonwealth by a department thereof.

(2) Department - Any department, office, board, commission or institution of the Executive, Judicial or Legislative branches including the constitutional offices.

(3) General Appropriation Bill - A bill enacted annually by the Legislature to set apart from public revenues a specific amount of money to be used by officers of the Commonwealth's departments for particular purposes to implement and maintain programs the Legislature has established for the state fiscal year.

(4) Invoice - A bill submitted by a vendor on a form determined by the contract between the department and the vendor, or if no form is specified, MMARS Form PV, which specifies the goods and/or services delivered and the price.

(5) MMARS - The Massachusetts Management Accounting and Reporting System is the acronym for the Automated Financial Management and Accounting System of the Commonwealth of Massachusetts.

(6) Medical Assistance Provider - (hereinafter Medicaid Providers) constitutes any agency, person, or group qualified under the laws of the Commonwealth to perform or provide medical care or services eligible for financial assistance from the department for all or part of the cost of eligible medical care and services pursuant to 42 USCA § 1396 *et seq.*

(7) Office of the Comptroller - A department established pursuant to M.G.L. c. 7A within the Executive Office for Administration and Finance.

(8) Vendor - A party, whether an individual, a partnership, a corporation, or other form of business entity, who is registered to do business with the Commonwealth and is listed on the Commonwealth's vendor file with the Office of the Comptroller, but excluding state employees, "03" employees, recipients of public assistance, and cities and town and other instrumentalities designated as governmental jurisdictions on the Commonwealth's vendor file.

(9) Warrant Date - The date of the weekly meeting of the Governor's Council, usually a Wednesday but if a holiday falls on a Wednesday, then the Tuesday, during which the Governor's Council approves expenditures under M.G.L. c. 7A, § 3.

### 4.03: Contractual Requirements



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(1) In addition to applicable statutory and/or regulatory requirements departments must include in all contracts, purchase orders, master-service agreements, price agreements and other forms of contracts, provisions which describe the invoicing and bill paying procedures which govern the contract including:

- (a) the form of the required invoice, specifying the standard Commonwealth invoice (MMARS Form PV) or other MMARS form, time sheet, vendor-generated invoice, magnetic tape or other form of invoice;
- (b) the information which must be included in the invoice (including department reference numbers, and charges);
- (c) the documentation which must be included with the invoice to demonstrate to the department that the goods and/or services were delivered;
- (d) the method of presentment, including when and where the invoice will be submitted, provided invoices shall be submitted after the goods and/or service have been delivered and accepted and the final invoice must be received by the department within 30 days of delivery and acceptance of the goods and/or services or July 31st whichever is sooner;
- (e) the required payment date, which shall be the date required by statute, the standard payment date used by the industry, the date negotiated by the vendor and the department, or 45 days, whichever is longer, and;
- (f) the application procedures to request payment for late penalty interest as delineated in 815 CMR 4.05 *INFRA*.

(2) Departments must have contracts executed and encumbrances approved on MMARS prior to the delivery of the goods and/or services in compliance with the MMARS Policy and Procedures Manuals, as amended, as well as compliance with applicable procurement regulation, and/or other administrative rules.

(3) Departments must establish encumbrances for emergency procurements so as to assure the availability of funds and approvals to pay invoices for such emergency goods and/or services procured. The payment date for emergency procurements shall be 45 days.

(4) The payment date for contracts which do not specify a payment date or for purchases which are authorized to be made without a purchase order or contract shall be 45 days.

(5) Departments procuring the services of Medicaid providers shall continue to process payments in accordance with federal standards delineated in 42 C.F.R. § 447.45(d).

### 4.04: Late Penalty Encumbrance

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(1) Departments shall establish a miscellaneous encumbrance under Object Code 698 of the Commonwealth's Expenditure Classification Code in accordance with the MMARS Policy and Procedures Manual, as amended, to cover the amounts which the department estimates it will expend in late penalty interest.

(2) For Fiscal Year 1988, (July 1, 1987 - June 30, 1988), departments may pay the late penalty interest from object Code 698 without an encumbrance.

### 4.05: Bill Paying Procedures

(1) Departments shall date-stamp all invoices received. The date centered on the invoice shall be the date the invoice was received by the department except that invoices delivered on Saturdays, Sundays, holidays or "skeleton days" as defined by Administrative Bulletin 85-3, shall be stamped with the date of the next business day.

(2) All departments, except the Department of Public Welfare, the Commission of the Blind, and other departments procuring the service of qualified Medicaid providers as determined by the Office of the Comptroller, shall within 15 calendar days from the date of receipt of the invoice confirm the following:

- (a) that the invoice was submitted according to the contractual terms after the delivery of the goods and/or services;
- (b) the goods and/or services were delivered in accordance with the contract and the required documentation, if any, was submitted with the invoice, and;
- (c) the charges are accurate

(3) For services rendered by Medicaid providers specifically exempted in 4.05(2) SUPRA, said departments shall have 30 days from the receipt of the invoice to approve or disapprove the invoice as provided in 815 CMR §§ 4.05(2), 4.05 (4).

(4) If any of the requirements in 8.15 CMR 4.05(2)(a) through (c) have not been confirmed then a copy of the invoice with a letter explaining the defect or impropriety and the method for curing same shall be sent by the department to the vendor no later than 15 calendar days from the receipt of the invoice. The letter must provide the name and telephone number of a contact person to assist the vendor. The department shall retain the original invoice for its records.

(5) The vendor must resubmit the invoice after the defect or impropriety is cured. The resubmitted invoice shall be date stamped as provided in 8.15 CMR 4.05(1) and reviewed as provided in 8.15 CMR 4.05(7).

(6) If the vendor believes that the invoice was improperly rejected, the vendor shall telephone the department contact person immediately. If the department after,

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reconsideration of the rejected invoice agrees that said invoice was properly submitted, then it shall process the invoice for payment as provider in 8.15 CMR 4.05(7).

(7) If the department discovers a defect or impropriety after the 15 day from the receipt of the invoice but before the payment date, the department shall telephone the vendor immediately to notify the vendor of the problem and shall confirm that oral conversation in writing. The vendor shall be afforded the opportunity to cure as provided in the contract and may resubmit the invoice after the cure. The department's failure to notify the vendor of a defect or impropriety within 15 days will not obligate the Commonwealth to pay for goods and/or services not delivered in accordance with the contract or goods and/or services not ordered or legally authorized.

(8) If the department confirms both the delivery of goods and/or services, and that the invoice was properly submitted and accurate, then the department shall process the invoice for payment in accordance with the MMARS Policy and Procedures Manual, as amended, and other supplementary instructions which are issued periodically by the Office of the Comptroller. The payment date must be scheduled for a warrant date which does not exceed the contractual payment period (or if no date is specified therein, 45 days). The calculable time frame for determining when to schedule the payment for the warrant is from the date of receipt of the invoice to the warrant date.

(9) If a vendor, who after submission of an invoice pursuant to applicable time frames delineated in 8.15 CMR 4.05(2) and (4), neither receives payment within 60 days nor a departmental decision not to honor the invoice as prescribed in 8.15 CMR 4.05(3), (5), (6), and (7) inclusive, then the vendor should contact the department contact officer. If it is determined that the payment was delayed due solely to departmental error, the department shall immediately process the invoice for payment and shall notify the vendor in writing of the warrant date on which the payment has been scheduled. The vendor may exercise its rights to make a demand for late penalty interest as provided in 8.15 CMR 4.06(1) - (6) INFRA.

(10) With the exception of Medicaid providers, if the rate setting commission grants a retroactive rate adjustment, the vendor shall invoice the department for any sums now owing to the vendor. The department shall have 45 days from the receipt of the invoice to make payment of the sums owing to the vendor.

(11) Retroactive rate adjustments granted by the Rate Setting Commission to Medicaid providers shall be processed by the department as soon as practicable after the date the rate is received. In no event shall the processing of Medicaid retroactive rate adjustments occur later than 60 days after the rate is received.

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(12) If no general appropriation bill is in effect at the beginning of the Commonwealth's fiscal year (July 1) the department shall date stamp and retain all invoices received for goods and/or services rendered in the new fiscal year according to instructions issued by the Office of the Comptroller. Invoices received for the prior fiscal year shall be processed as accounts payable items in accordance to instructions issued annually by the Office of the Comptroller. Vendors should be notified in writing that invoices for the new fiscal year will be processed as soon as the Office of the Comptroller notifies departments that funds have become legally available.

### 4.06: Late Penalty Interest Procedures

(1) Eligible vendors may qualify for late penalty interest if the vendor has provided the goods and/or services, has properly submitted an invoice, and the payment received by the vendor was not scheduled on the warrant within the contractual payment period i.e., from the date of receipt of the invoice to the warrant date, or if no such period is specified in the contract, within 45 days.

(2) Invoices received by departments after the close of the Commonwealth's accounts payable period in violation of 8.15 CMR 4.03(1)(d) shall be ineligible for the payment of late penalty interest. Departments shall notify the vendor in writing when an invoice must be processed as a prior year deficiency appropriation request.

(3) Notwithstanding the time frame specified in the contract, if a vendor has not receive payment pursuant to 8.15 CMR 4.05(8), as modified by 4.05(11), then the vendor may demand late penalty interest by invoicing the department for same. The demand shall be submitted on a Commonwealth Standard Invoice (MMARS Form PV) in the manner specified in the contract to the address to which the original invoice was submitted. The vendor shall document the method and timing of presentment of the original invoice and provide a copy of the check stub or wire transfer certificate denoting payment to the department.

(4) Late Penalty interest shall be computed at a rate to be set semiannually on January 1 and July 1 by the Commissioner of Administration by publication in the Massachusetts Register. With the exception of departments procuring the services of Medicaid providers, the Commonwealth will pay interest at the rate promulgated by the Secretary of Administration and Finance on the amount owed from the payment date (or the forty-sixth day if no payment date is specified in the contract) until the warrant date on which the department had scheduled the payment.

(5) The department shall date stamp the demand for late payment in accordance with 8.15 CMR 4.05(1). The department shall review the vendor's demand for late

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payment interest within five days of receipt. The department shall approve the payment of late penalty interest if said department confirms the original invoice was not scheduled for warrant within the payment date. Said payment shall be computed and processed in accordance with procedures set forth in 4.06(6) INFRA. Failure of the department to review the vendor's demand for late penalty interest within the stated time frames shall subject the demand to desk review by the Office of the General Counsel to the Comptroller pursuant to 8.15 CMR 4.07.

(6) The amount of penalty interest shall be computed as follows:

The payment due under the original invoice, multiplied by the number of days between the contract payment date and the warrant upon which the payment was actually scheduled, multiplied by the daily interest rate as set by the Commissioner of Administration and Finance.

The department shall add the figures to the invoice submitted by the vendor and shall process the late penalty interest in accordance with the MMARS Policy and Procedures Manual, as amended, under Object Code 698. It is the department's responsibility to assure that the invoice for late penalty interest clears the payment process successfully to facilitate its appearance on the earliest warrant.

(7) If the department disapproves the vendor's demand for late penalty interest because the time frames were tolled due to the proper rejection of the invoice under 8.15 CMR 4.05(3), (5) and (7) inclusive, or because the payment was made within the payment date, then within five days the department will notify the vendor of the rejection of the demand and forward the file to the Office of the General Counsel to the Comptroller for desk review pursuant to the provisions delineated in 8.15 CMR 4.07.

### 4.07: Desk Review

(1) Desk Review is conducted by the Office of the General Counsel to the Comptroller and is available in the following instances:

(a) by the vendor

1. when a department fails after 60 days to respond to vendor's request pursuant to 8.15 CMR 4.05(9)
2. when a department fails to review a vendor's demand for late penalty interest pursuant to 8.15 CMR 4.06(5)

(b) by a department

1. when a department disapproves the vendor's demand for late penalty interest because the time frames were tolled due to proper rejection of the invoice pursuant to 8.15 CMR 4.06(7)
2. when a department disapproves the demand for late penalty interest because payment was made within the payment date pursuant to 8.15 CMR 4.05(6), (7) and 4.06(7).

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(2) The requesting party shall forward the file including: a copy of the original invoice, any communication between the vendor or department, where applicable, the original warrant date, the vendor's demand for late penalty interest and the department's written reason for disapproval, if any.

(3) The Office of the General Counsel of the Comptroller shall review the written documents within five days of receipt and either:

- (a) order the department to pay the late penalty interest including the time spent in the desk review appeal process, or;
- (b) notify the vendor that the appeal was decided in favor of the department

(4) Review by the Office of the General Counsel of the Comptroller shall not be subject to administrative appeal and shall constitute final agency decision.

### REGULATORY AUTHORITY

8.15 CMR 4.00: M.G.L. c. 7, § 14B; c. 29, § 20C; c. 29, § 29C.

Effective 12/29/95

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### 815 CMR 5.00: SETTLEMENTS AND JUDGMENTS

#### Section

- 5.01: Purpose
- 5.02: Definitions and Applicability
- 5.03: Procedures and Time lines for Claims Governed by M.G.L. c. 258
- 5.04: Settlement or Judgement after the Initiation of Litigation Pursuant to M.G.L. c. 258
- 5.05: Exclusion of Payment of Presentment Period Settlements from Tort Claim Fund
- 5.06: Procedures for Personnel Claims for Monetary Awards
- 5.07: Procedures for Contract Claims
- 5.08: Other Litigation
- 5.09: General Procedure for Payment of Settlements and Judgments after Initiation of Litigation
- 5.10: Responsibilities of the Comptroller
- 5.11: Issuance of Checks

#### 5.01: Purpose

(1) The purpose of 815 CMR 5.00 is to clarify the procedures by which agencies may preserve the availability of funds and may obtain access to funds for the payment of judgments and settlements. Such clarification will:

- (a) Aid agencies in making the payment of judgments and settlements a part of their current year operation or capital project budgeting; and
- (b) Insure faster payment of judgments and settlements, which will lessen the waiting time for successful claimants and litigants against the Commonwealth and its agencies and minimize the amount of any applicable interest.

(2) 815 CMR 5.00 shall identify funds legally available for payment, and shall minimize the need to use deficiency payments for judgments and settlements of claims against the Commonwealth. 815 CMR 5.00 shall also prevent any use by agencies of the Commonwealth of funds not legally available for payments of such judgments and settlements.

#### 5.02: Definitions And Applicability

815 CMR 5.00 is applicable to the payment of settlements and judgments for claims against the Commonwealth and its agencies. For the purposes of 815 CMR 5.00, these terms are defined as follows:

Agency - Any agency, department, office, commission, committee, council, board, division, bureau, institution (including institutions of higher education), office or section within any executive or legislative department of the Commonwealth. Authorities established by statute such as the Massachusetts Bay Transportation

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Authority, the Massachusetts Turnpike Authority, the Massachusetts Water Resources Authority, the Massachusetts Port Authority and local housing authorities are not included within the definition of agency.

Claim - Any demand by any person for damages to compensate an injury or wrong allegedly suffered, including but not limited to personal injury, violation of civil rights, breach of contract, failure to comply with contract bidding laws, incorrect or improper personnel determinations regarding pay, promotion or discipline, failure to comply with statutory or constitutional provisions applicable to employment, and eminent domain taking damages, including any attorney's fees and interest associated with these claims.

Judgment - Any final, unappealable order of any court or any administrative body authorized by statute to review or adjudicate claims against the Commonwealth and its agencies.

### Legally Available Funds

(a) Legally available funds include monies appropriated either specifically for the payment of settlements and judgments or authorized for the payment of certain contractual expenditures;

(b) Legally available funds *do not include* any funds not specifically authorized by 815 CMR 5.00 for use in the payment of judgments and settlements, including any legislatively authorized "special funds" and trust funds as defined in M.G.L. c. 29, § 1. Such special funds and trust funds must be used solely to further their statutorily authorized goals. Agencies shall not interpret those goals to include the payment of judgments and settlements arising from claims related to those goals, unless such payments are specifically authorized for the funds.

Settlement - Any agreement to pay a claim covered by 815 CMR 5.00 entered into by an official duly authorized to bind the Commonwealth or an agency in payment of a claim, whether the agreement settles the claim prior to or after the institution of litigation.

Tort Claims Administrator - The person designated by the Secretary of Administration and Finance to administer the duties and responsibilities outlined in 815 CMR 5.00.

### 5.03: Procedures For Tort Claims Governed By M.G.L. c. 258

Settlement during statutory presentment period. A claim under M.G.L. c. 258 must be assessed and acted upon within six months of receipt by the Executive Office of a Secretariat (or by the Office of the Attorney General when initial



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presentment is made there). The following procedures and Time lines shall be followed:

Day 1: Presentment Notice received by the appropriate Executive Office [or the Office of the Attorney General (AGO)]

Day 3: AGO forwards a copy of the notice to the appropriate Executive Office; the Executive Office forwards a copy of any notice it receives from a claimant to the AGO.

Day 90: Executive Office receives agency's investigation report and disposition recommendation.

Day 120: Executive Office has acted on recommendation in one of the following ways:

commenced negotiations with claimant (or legal representative thereof) on settlements of \$2500 and under:

sent investigation report and settlement recommendation over \$2500 to AGO or ;

sent denial to claimant.

Day 135: AGO approves terms of settlement on recommendations over \$2500. Executive Office commences settlement negotiations with claimant.

Day 160: Executive Office sends negotiated settlement documents to Comptroller (attention: DAB) together with assents of AGO and Executive Office for Administration and Finance (if required) and a release executed by claimant.

The documents forwarded to the Comptroller should include the following:

a copy of the presentment letter;

a settlement memorandum describing the terms of the settlement;

a release executed by claimant and;

the consent of the Attorney General (for settlement over \$2500) and the Secretary of Administration and Finance (for settlement over \$20,000) if required.

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Comptroller processes settlement payment.

Day 180: Presentment procedures have been completed. Executive Office has sent copies of investigation report, settlement documents and denials to AGO.

### 5.04: Settlement or Judgment After the Initiation of Litigation Pursuant to M.G.L. c. 258

Payment of settlements and judgments after the initiation of litigation pursuant to M.G.L. c. 258 ordinarily shall be in accordance with the procedures set forth in 815 CMR 5.09 and shall be made only from funds obtained, as described below, through funds specifically appropriated to pay such judgments or settlements. But in exceptional circumstances such settlements and judgments may be paid from the Tort Claim Fund if approved by the Secretary of the Executive Office for Administration and Finance.

### 5.05: Exclusion of Payment of Presentment Period Settlements from Tort Claim Fund

No settlement of a tort claim based on any claim described in M.G.L. c. 258, § 10, or on any civil rights claim in the nature of a tort, may be paid from the Tort Claim Fund, during the six month presentment period or otherwise.

### 5.06: Procedures For Personnel Claims For Monetary Awards

(1) 815 CMR 5.06 applies to:

- (a) Claims for monetary awards by current or former employees regarding any aspect of their employment by the Commonwealth, including, but not limited to: claims related to all non-classification job actions (including discipline and termination, pay and promotion, transfers, leave and overtime disputes), position classifications, and conditions of employment or employment discrimination; and
- (b) Settlements or orders (administrative or judicial) arising from proceedings involving employees of the Commonwealth before the Massachusetts Civil Service Commission (pursuant to M.G.L. c. 31), the Massachusetts Commission Against Discrimination (pursuant to M.G.L. c. 151B), the Massachusetts Labor Relations Commission (pursuant to M.G.L. c. 150 E), the Massachusetts Department of Personnel Administration (pursuant to M.G.L. c. 30 §§ 45-50) and the grievance and arbitration procedures set forth in any collective bargaining agreement entered into by the Commonwealth or its agencies, as authorized by M.G.L. c. 150E, § 8.

(2) 815 CMR 5.06 does not apply to retroactive salary adjustments made pursuant to negotiated collective bargaining agreements. Such retroactive salary adjustments

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are separately appropriated to meet agency obligations under legislatively approved collective bargaining agreements. These funds are held as a salary reserve and allocated by the Fiscal Affairs Division of the Executive Office for Administration and Finance ("FAD").

(3) Payment of Settlements, Orders or Judgments relating to personnel claims for monetary awards.

(a) The following may be paid from the agencies' current year operating budgets, without regard to the year in which the claims arose, but only from funds appropriated for salary purposes, if such unused salary funds exist and pursuant to spending plan approval by FAD:

1. Awards by the Personnel Administrator in personnel classification appeals pursuant to M.G.L. c. 30, § 49.
2. Arbitration and grievance procedures awards under collective bargaining agreements pursuant to M.G.L. c. 150E, § 8. Such claims shall be paid as soon as possible after the appointing agency receives notice of the award and spending approval from FAD. Checks in payment of such awards shall be issued at the end of the first full pay period after receipt of such notice and approval.
3. All other awards for back pay (not including attorney's fees, interest, or other damage awards) for personnel claims of employees who currently are on the payroll of the Commonwealth.

(b) All other payments of settlements, orders or judgments relating to personnel claims for money awards described in 815 CMR 5.06(3), shall be in accordance with 815 CMR 5.09 INFRA, and only from funds obtained through the deficiency budget process specifically to pay such settlement, order or judgment. Such payments shall include, but not be limited to, back pay or damage awards to terminated employees, attorneys fees or interest awards to terminated employees, attorneys fees or interest awards to any employees, continuing or terminated, and back pay awards to continuing employees which, because of lack of funds, cannot be paid pursuant to 815 CMR 5.06(3), *Supra*.

### 5.07: Procedures For Contract Claims

(1) This section applies to:

(a) Post-litigation settlements or judgments in contract claims arising from capital projects including:

1. all claims arising from contracts related to capital construction projects funded through bond funds pursuant to M.G.L. c. 29, § 14, including contracts for all phases of project study, design and construction;
2. all claims arising from contracts related to "pool account" capital projects, i.e., bonded projects which include various activities of a certain

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type, such as asbestos or toxic waste removal; and

3. all claims arising from eminent domain takings in connection with capital projects.

(b) Post-litigation settlements and judgments in contract claims arising from agency contracts funded from the agency's annual maintenance appropriation.

(2) 815 CMR 5.07 generally does not apply to disputed claims for payment under contracts, whether funded through capital or maintenance appropriations, which are resolved at the administrative level as part of a dispute resolution mechanism of contract management prior to the initiation of litigation. These claims may be paid from funds encumbered for the contract or by the submission of a change order or release or other appropriate encumbering action as appropriate. If such funds are unavailable, payment shall be made pursuant to 815 CMR 5.09 *Infra*.

(3) Notification Procedure When Contract Litigation Instituted.

(a) Within 30 days of the institution of litigation on any contract claim, the agency attorney, or other staff person assigned to the matter for the purposes of evaluating the financial risk of the litigation and monitoring its progress, shall submit a report on the claim to the General Counsel of the Comptroller. The report shall be on a form supplied by the Comptroller and include:

1. a description of the claim, including contract and encumbrance identification numbers;
2. the amount of the claim;
3. an evaluation of the potential amount of contingent liability; and
4. an evaluation of the potential for a settlement or likelihood of recovery on the claim.

(b) Reports shall be updated once a year by August 1. Where possible, reports shall be prepared in consultation with the Assistant or Special Assistant Attorney General assigned to handle the case.

(4) Procedure for payment

(a) Contract claims from maintenance appropriations which are settled or ordered to be paid pursuant to litigation in the fiscal year in which funds were encumbered shall be paid from said encumbered funds through the accounts payable period.

(b) Any settled pre-litigation claims related to regular maintenance appropriations for which contract funds are unavailable due to the expiration of the accounts payable period, and all post-litigation settlements and judgments in contract matters shall be paid in accordance with the procedures set forth in 815 CMR 5.06 *Infra*, regarding the payment of settlements and judgments after the initiation of litigation.

### 5.08: Other Litigation

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Settlement and judgments arising from any claim other than those enumerated above shall be made in accordance with 815 CMR 5.09 *Infra*

### 5.09: General Procedure For Payment Of Settlements And Judgment After Initiation Of Litigation

(1) Responsibility of assigned attorney or staff person: Preparation of Reports. When litigation involving a monetary claim against the Commonwealth covered by these regulation terminates in a final Settlement or judgment with regard to such a claim, the agency attorney or staff person assigned to handle or monitor the claim shall do the following:

(a) Prepare a report indicating:

1. the principal amount of the settlement or judgment;
2. the amount of any attorney's fee award;
3. the amount of any interest award or accrued, and whether the interest continues to accrue post-judgment;
4. a request for payment of the amount;
5. a description of the basis for the request, (e.g., Court order or settlement agreement); and
6. whether the assigned attorney desires to award the payment check to the claimant;

(b) Forward the report with a copy of the settlement or judgment just described to the General Counsel of the Comptroller within the time frames set forth in 815 CMR 5.09(2). In the case of settlement prior to judgment, the agency need not reduce the settlement to a court ordered agreement for judgment.

(c) Retain the litigation file as open until the Comptroller notifies the assigned attorney that the payment has been made. The Attorney General's litigation file may be closed when that office has provided sufficient information to allow the concerned agency to file a payment request with the Comptroller.

(2) Time for preparation of reports. The report described in 815 CMR 5.09(1)(a) shall be sent by the agency attorney to the General Counsel of the Comptroller:

- (a) if based on a settlement agreement, within 15 days of signing of the final settlement papers; or
- (b) if based on a judgment against the Commonwealth or any agency, within fifteen days of the Commonwealth's decision not to appeal; or
- (c) if based on a judgment against the Commonwealth or an agency, where the Commonwealth decides to take an appeal from the judgment, within fifteen days of any final order on appeal or in remand proceedings, if such remand proceedings are ordered.

(3) Each report shall be prepared on forms supplied by the Comptroller and after

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consultation with the Assistant Attorney General or Special Assistant Attorney General assigned to the matter, where appropriate.

### 5.10: Responsibilities of the Comptroller.

(1) Upon receipt of a report described in 815 CMR 5.09(1)(a) from an assigned attorney, the Comptroller will review the report, certify the amount due and payable, review agency accounts related to the claim to determine whether funds are available to pay the claim, and consult with the agency regarding available funds.

(a) If funds are available to satisfy the claim in an applicable agency account, in whole or in part, the Comptroller will authorize the agency to initiate the warrant procedure for issuance of a check from the agency account.

(b) If no funds are available to satisfy the claim in whole or in part, the Comptroller will refer the certified amount to the agency with instructions for the agency to initiate a deficiency budget request.

(c) The Comptroller will notify the assigned attorney after the check is issued in payment of the claim that the litigation file may be closed.

### 5.11: Issuance of Checks

Checks issued pursuant to 815 CMR 5.09 shall be made to the order of the claimant or, if the claimant is represented by counsel, to the order of the claimant and counsel. Checks shall be mailed to the claimant or, if the claimant is represented by counsel, to the counsel, or, if requested by the assigned attorney, to the assigned attorney.

## REGULATORY AUTHORITY

815 CMR 5.00: M.G.L. c. 30A; c. 258, §§ 1-5.

Effective: 12/29/95

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### 815 CMR 6.00: INTERDEPARTMENTAL FISCAL BUSINESS

#### Section

- 6.01: Purpose, Application and Authority
- 6.02: Definitions
- 6.03: Interdepartmental Service Agreements (ISAs)
- 6.04: Interdepartmental Chargebacks
- 6.05: Interdepartmental Fiscal Transactions
- 6.06: Disputes
- 6.07: Severability

#### 6.01: Purpose, Application and Authority

##### (1) Purpose.

(a) Purpose of 815 CMR 6.00. The purpose of 815 CMR 6.00 is to provide all State Departments with rules and procedures for conducting Interdepartmental Fiscal Business, including Interdepartmental Service Agreements (ISAs) and Interdepartmental Chargebacks which require a transfer of funds between two Departments.

(b) Use of Interdepartmental Fiscal Business. ISAs and chargebacks may only be used to compensate a Seller Department for providing requested commodities and services, not to supplement a Seller Department's current available funding to pursue its own mission (such as offsetting all or a portion of administrative costs, equipment or for personnel not designated for ISA or chargeback performance). In no event should ISA or chargeback rates exceed the actual costs to the Seller Department for providing the ISA or chargeback commodities and services, unless otherwise specified by law.

(c) Role of the Office of the Comptroller. All interdepartmental fiscal transactions are required to be made through the state accounting system as prescribed by the Comptroller. The Office of the Comptroller will interpret 815 CMR 6.00 and take any actions necessary to carry out the purposes of 815 CMR 6.00, including issuing additional policies, procedures and forms to be used by Departments. The Office of the Comptroller's oversight of Interdepartmental Fiscal Business is limited to review and processing of the fiscal transactions necessary to support an ISA or chargeback, and will not include a review of the underlying business decisions which lead to the submission of an ISA or chargeback. Department's will be responsible for conducting Interdepartmental Fiscal Business using best value and other good business practices similar to any other contract or Department expenditure, and will be required to certify that the Interdepartmental Fiscal Business complies with all applicable state or federal, general or special laws or regulations.

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(2) Application. 815 CMR 6.00 applies to all State Departments conducting interdepartmental business with another State Department(s), including agencies, subdivisions, offices, boards, commissions or institutions of the Executive, Judicial and Legislative Branches.

(3) Authority. 815 CMR 6.00 is adopted under the authority of M.G.L. c. 7A, §§ 8, 11, and 15 and M.G.L. c. 29, § 29I.

### 6.02: Definitions

Buyer Department. A State Department with statutory authorization to procure goods and services to implement programs, services or objectives authorized under general or special law. The Buyer Department transfers funds to a Seller Department as compensation for goods or services provided by the Seller Department. Buyer Departments may also be referred to as “Parent Departments”, and an Buyer Department ISA account may also be referred to as a “Parent account”.

Department. Agencies, subdivisions, offices, boards, commissions or institutions of the Executive, Judicial and Legislative Branches of the State.

Interdepartmental Chargebacks. Fee-based charges for statutorily authorized commodities and services which are available to State Departments on an *ad hoc* request basis, a public fee basis, or statewide Chargeback basis.

Interdepartmental Encumbrance (IE). An encumbrance document used to notify Buyer Departments of negotiated or mandated estimated charges for the Chargeback goods or services and to reserve funds to pay for these charges.

Interdepartmental Fiscal Business. All types of business relationships that occur between a Buyer and Seller Department requiring the Buyer Department to transfer funds in the state accounting system to the Seller Department.

Interdepartmental Service Agreement (ISA). Non-chargeback interdepartmental business relationships are evidenced by an Interdepartmental Service Agreement (ISA). The ISA is a contract between two state departments that documents the terms and conditions of their business relationship. The ISA must be in accord with and consistent with the language in any appropriation act funding the ISA and any applicable general or special state or federal law or regulation.

Interdepartmental Service Agreement (ISA) Form. A standard form issued by the Office of the Comptroller which must be signed by Seller and Buyer Departments and filed as prescribed by the Office of the Comptroller.



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Interdepartmental Voucher (IV). A transaction used by an Authorized Chargeback Department to bill a Buyer Department for the costs of goods and services, and to enable payment from the Buyer Department.

Quality Assurance Program. A program to review and support Departmental compliance with state finance law and applicable policies and procedures relating to contracting and Departmental purchasing expenditures. The Office of the Comptroller shall review ISAs and Interdepartmental Chargebacks as part of its Quality Assurance Program.

Seller Department. A State department which is mandated or authorized in statute to provide the type of services, commodities or programs which are requested or required by a Buyer Department. A Seller Department provides commodities or services, and receives a transfer of funds from a Buyer Department through either an Interdepartmental Service Agreement (ISA), or an Interdepartmental Chargeback, if so authorized. Seller Departments may also be referred to as “Child Departments”, and an Seller Department ISA account may also be referred to as a “Child account”.

State. The Commonwealth of Massachusetts.

### 6.03: Interdepartmental Service Agreements (ISAs)

(1) Interdepartmental Service Agreement (ISA) Management. The Chief Fiscal Officer (CFO) for the Buyer and Seller Departments will be responsible for management of ISAs within their Department in accordance with 815 CMR 6.00 and policies and procedures published by the Office of the Comptroller. Management of ISAs shall include, but is not limited to, the evaluation of the ISA option based upon best value, ensuring timely ISA execution, processing of MMARS transactions prior to the start of ISA performance, meeting reporting requirements, timely payment of invoices in accordance with the Commonwealth’s bill paying policy, monitoring ISA performance, and acting as the liaison for the Quality Assurance Program. Buyer and Seller Department ISA Managers designated for each ISA will be responsible for the administration of the ISA and will be the points of contact for ISA correspondence.

(2) Interdepartmental Service Agreement (ISA) Effective Date. The effective date of an ISA shall be the latest of the following three dates:

- (a) The date the Interdepartmental Service Agreement Form has been executed by an authorized signatory of the Buyer Department.
- (b) The date the Interdepartmental Service Agreement Form has been executed by an authorized signatory of the Seller Department.
- (c) A later effective date specified in the Interdepartmental Service Agreement

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Form.

(3) Interdepartmental Service Agreement (ISA) Documentation.

(a) Buyer and Seller Departments entering into an ISA must execute the Interdepartmental Service Agreement (ISA) Form prior to the start of performance, and file the ISA and required attachments as prescribed by the Office of the Comptroller.

(b) Signature by the Buyer Department certifies that the Buyer Department is statutorily authorized or required to procure the type of performance under the ISA, that sufficient funds are available for ISA performance, and that the ISA and attachments are in compliance with 815 CMR 6.00 and all other requirements of law.

(c) Signature of the Seller Department certifies that the Seller Department is statutorily authorized to provide the type of performance sought by the Buyer under the ISA and that the ISA and attachments are in compliance with 815 CMR 6.00 and all other requirements of law.

(d) An ISA is a contract and all contract execution and processing rules apply.

(e) An ISA Amendment is required for changes in ISA duration, ISA renewals, increases or decreases in maximum obligation, any material change in performance requirements and any changes in account structure and must be executed by the Buyer and Seller Department prior to the termination date of the ISA, or as amended.

(4) Duration of Interdepartmental Service Agreements (ISAs). Most ISAs are approved annually on a state fiscal year basis. However, ISAs should have the duration that makes sense from a business perspective. Multi-Year ISAs are encouraged if it best supports the business process for the Departments. Similar to other types of contracts, all ISAs are subject to appropriation or the availability of adequate non-appropriated funding.

(5) Interdepartmental Service Agreement Funding.

(a) The Buyer Department must allocate the amount needed for the Seller Department's performance for the entire fiscal year into the authorized ISA account(s), or otherwise encumber sufficient funds as prescribed by the Office of the Comptroller, to ensure timely encumbrance of funds and payment by the Seller Department for employees, contractors, grantees, etc. in accordance with Commonwealth payment policies;

(b) Seller Departments may expend funds for ISA performance only from the authorized ISA allocation account(s);

(c) When expending ISA funds, Seller Departments must treat these funds the same as any other contract funds, and conduct procurements and make ISA expenditures in accordance with the same state finance law and applicable general and special state and federal laws and regulations that apply to other

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types of contracts procure by the Seller Department.

(6) Access to Records. Buyer Departments are entitled to “scan only” online access to state accounting system (MMARS) data of the Seller Department for ISA business purposes. In addition, Seller Departments are required to provide whatever progress, programmatic or expenditure reports to the Buyer Department, as specified in an ISA. Even if reports are not specified, the Seller Department is required to provide a detailed accounting of all expenditures, encumbrances, planned encumbrances, any information in the state accounting or payroll system related to the child account, access to any ISA records, or on-site access to monitor ISA performance, upon request at any time during the period of the ISA. The Seller Department shall cooperate with the Buyer Department to provide whatever information, data or access is necessary to verify ISA performance and expenditures. Seller Department shall provide the same access to ISA reports and data to the Office of the Comptroller, the State Auditor’s Office and the House and Senate Committees on Ways and Means.

### 6.04: Interdepartmental Chargebacks

(1) Types of Chargeback Department Authorization. There are three types of Chargeback Department Authorization:

(a) Ad Hoc Chargeback Department. A State Department with explicit statutory authority to provide a specific service(s) or good(s) at a Buyer Department's request, and to be paid by the Buyer Department for the actual cost of the specific service(s) or good(s) provided.

(b) Public Fee Chargeback Department. A Department with explicit statutory authority to charge the general public and other Departments for authorized services, goods, fees or licenses, and for which such charges Departments are not specifically exempted by law. Public Fee Chargeback Departments may charge Buyer Departments for the amounts authorized by law, except for fees for licenses or other charges which total less than \$25.00 per department per fiscal year and fees for public records requests under \$25.00, except where the Public Fee Chargeback department can demonstrate substantial hardship.

(c) Statewide Chargeback Department. A Department mandated by explicit statutory authority to charge Departments for services rendered by the Statewide Chargeback Department, or for payments made by the Chargeback Department on behalf of State Departments. For certain mandated Statewide Chargebacks that the Office of the Comptroller, or other authorized Department, are required to make on behalf of all State Departments (for example, unemployment insurance, unemployment health insurance, and medicare tax) the Office of the Comptroller will enable automated processing of Interdepartmental Encumbrances (IE) and Interdepartmental Vouchers (IV), or other appropriate

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transactions , on behalf of all Departments in lieu of the procedures outlined in 815 CMR 6.04(4) and (5).

(2) Chargeback Department status is approved annually by the Office of the Comptroller and recorded in the state accounting system. Departments may not provide legislatively authorized goods or services to another Department prior to approval as a Chargeback Department in the state accounting system. A department seeking to be approved as an Chargeback Department must submit the following documentation to the Office of the Comptroller prior to providing authorized Chargeback goods or services:

- (a) a completed Chargeback Department Authorization Form;
- (b) evidence of the Department's explicit legislative authorization to charge other State Departments for specified goods or services;
- (c) a schedule of rates and charges for the authorized service(s) or good(s), including a detailed explanation of how each rate was derived (statutory amount, formula, etc.) justifying the accuracy of the rates and charges;
- (d) The eight-digit account number or fund to be credited with Chargeback funds.

(3) Prior to the provision of Chargeback goods or services, or both, authorized Chargeback Departments must notify Buyer Departments of negotiated or mandated estimated charges for the Chargeback goods or services using an Interdepartmental Encumbrance (IE).

(4) Within 30 days of the receipt of notification of estimated or mandated charges from an Authorized Chargeback Department the Buyer Department must encumber sufficient funds to cover the full fiscal year of estimated or mandated charges. If the Buyer Department fails to encumber sufficient funds within 45 days of the receipt of notification of estimated or mandated charges from the Authorized Chargeback Department, the Chargeback Department may submit a request to the Office of the Comptroller to encumber funds on behalf of the delinquent Buyer Department.

(5) Promptly after the period in which services are performed or goods are delivered, or both, the Chargeback Department shall bill the Buyer Department using an Interdepartmental Voucher (IV). The Buyer Department must process payment within 30 days of receipt of the bill. If the Chargeback Department has not received payment within 45 days of the submission of the IV, the Chargeback Department may request assistance from the Office of the Comptroller to make the payment on behalf of the delinquent Buyer Department. The name of the delinquent Buyer Department shall be submitted upon request to the House and Senate Ways and Means Committees for failure to make timely payments.

(6) Revenue received from Interdepartmental Chargebacks may be retained and

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expended by the Seller Department in accordance with the authorizing legislation for the chargeback. Once a Department has reached the limit imposed by the Department's chargeback authorization for retaining and expending funds received as chargeback revenues, the Department may not use an ISA in order to retain and expend additional revenues received for chargeback commodities or services, without prior approval of the Office of the Comptroller.

### 6.05: Interdepartmental Fiscal Transactions

There are multiple fiscal transactions in the state accounting system that support interdepartmental business. The appropriate transactions and use of these transactions for interdepartmental business will be prescribed policies and procedures issued by the Office of the Comptroller. The Office of the Comptroller reserves the right to make any adjustments to the state accounting system to correct errors made during the processing of an interdepartmental fiscal transaction.

### 6.06: Disputes

Departments must make a good faith effort to resolve any dispute arising under 815 CMR 6.00 within 30 calendar days using all appropriate internal procedures including seeking assistance from their respective secretariats, but in no event shall this resolution period extend beyond May 30th in any fiscal year. In the event the Departments are unable to resolve a dispute within the stated period, either Department may request assistance from the Office of the Comptroller to resolve the dispute or to provide a determination as to the application or interpretation of 815 CMR 6.00.

### 6.07: Severability

If any provision of 815 CMR 6.00 is declared or found to be illegal, unenforceable or void, then Departments shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

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### REGULATORY AUTHORITY

815 CMR 6.00: M.G.L. c. 7A §§ 8, 11, and 15 and M.G.L. c. 29, § 29I.

Effective: 8/31/01

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### 815 CMR 8.00: CONTINGENT CONTRACTS FOR NON-TAX REVENUE MAXIMIZATION

#### Section:

- 8.01: Application, Purpose, Scope and Authority
- 8.02: Definitions
- 8.03: Procurement
- 8.04: Contract Terms and Conditions
- 8.05: Contract and Project Management and Supervision
- 8.06: Accounting Procedures
- 8.07: Appeals Process

#### 8.01: Application, Purpose, Scope and Authority

(1) The purpose of 815 CMR 8.00 is to assure that the departments of the Commonwealth have access to professional and expert services to promote the efficiency and effectiveness of programs and to determine the necessity, appropriateness and reasonableness of present and future expenditures for operations which qualify for federal financial participation and other reimbursements.

(2) A method to obtain additional professional and expert services is to engage outside assistance, and to pay for such assistance from the proceeds of the additional revenue attributable thereto. Since the ability to pay the contractor is directly related to the accomplishment of increased revenue, the financial exchange is contingent upon the success of the underlying revenue maximization effort.

(3) All departments in all branches of state government using the Massachusetts Management Accounting and Reporting System (MMARS) may participate in contingency contracts to improve the efficiency and effectiveness of revenue performance. Entities that are component units of the Commonwealth but do not use MMARS may not participate in contingency contracts authorized under 815 CMR 8.00.

(4) 815 CMR 8.00 is adopted under authority of M.G.L. c. 29, § 29E.

#### 8.02: Definitions

Base Revenue and Maximized Revenue. The term base revenue refers to the amount of revenue, federal or from any other sources, that is estimated or budgeted to occur without any special assistance or advice from outside parties. In most cases the calculation and measurement of base revenue is a function of existing

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operational plans of the department. The term maximized revenue refers to the increment of revenue, federal or from any other source, that is estimated or budgeted to occur because of special efforts or projects and is to be in addition to the base revenue. Contingency contracts may be employed to promote the accomplishment of both base revenue and maximized revenue.

Office of the Comptroller. The Office established pursuant to M.G.L. c. 7A and authorized to administer contingency contracts to promote the efficiency and effectiveness of federal entitlement and other programs and to determine the necessity, appropriateness and reasonableness of present and future expenditures for operations which qualify for federal financial participation or other reimbursement pursuant to M.G.L. c. 29, § 29E. The Office of the Comptroller is also a department.

Contingency Contract. A contract executed by one or several state departments with other parties pursuant to 815 CMR 8.00. In a contingency contract, the amount of compensation paid to other parties is directly linked to and paid from the attainment of increased revenue. Contracts under 815 CMR 8.00 may have a duration up to but no longer than 36 months.

Department. An entity of the state government recognized by the Office of the Comptroller as a legally defined component unit of the government. Department recognition is demonstrated by the establishment of department codes and financial accounting records on the MMARS as determined by the Comptroller. Pursuant to its enabling statute and subject to appropriation and other special laws or agreements, a department may operate programs, either directly through its own organization or through other state departments or organizations, in a manner that allows federal financial participation and other reimbursement.

Evaluation Criteria and Selection Committee. These are additional elements of an RFP that demonstrate specific steps to promote competitive interest and result in a contingency contract under terms most beneficial to the Commonwealth.

Federal Revenue or Federal Financial Participation. In the context of 815 CMR 8.00, these terms have the same meaning and refer to the flow of funds from the federal government to the state government. In most cases there are specific federal laws and specific federal regulations with companion operational terms and conditions that must be satisfied by the state in order to qualify for and receive federal revenue. In many cases, the federal revenue represents a portion of the total program cost, and the state may choose to incur originally the entire program cost and subsequently apply the federal revenue as a reimbursement or off set to the total program cost. Under this reimbursement model, the federal revenue is considered to



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be the federal share of a total program which qualifies for federal financial assistance.

Fiscal Affairs Division (FAD). The Division within the Executive Office of Administration and Finance with the responsibility and authority to plan and direct the statewide budget process. The FAD, also referred to as the Budget Bureau, has a special interest in the design and implementation of programs in a manner that allows opportunity for federal financial participation. The FAD is also a department.

Fiscal Conduit. An arrangement which exhibits the features of supplementation of existing staff or resources to the Department typically provided and controlled through the state budget process. The identification of a fiscal conduit will be based on the judgement of the Office of the Comptroller, and such judgement will include but not be limited to criteria such as: a) intention to circumvent the budget process, b) similarity between resources normally provided in the state budget process and resources provided by the outside party under the contingency contract, and c) length of time that such resources are planned and actually used. The Office of the Comptroller will take actions as relevant to disapprove and not allow fiscal conduit arrangements under 815 CMR 8.00.

Interdepartmental Service Agreement (ISA). An arrangement between two or more state departments that has many of the features of a contract. All ISA arrangements are governed by the Office of the Comptroller under a separate regulation published as 815 CMR 6.00. It is anticipated that many projects involving contingency contracts may also involve Interdepartmental Service Agreements.

Massachusetts Management Accounting and Reporting System (MMARS). The official accounting system for the Commonwealth organized and operated by the Office of the Comptroller.

Measurement Basis for Contingency Contracts. The measurement basis for contingency contracts shall be specified to establish clearly the difference between that revenue which would be received without outside assistance and that revenue expected to be received with outside assistance. A measurement basis for contingency contracts may be defined and applied to base revenue situations, maximized revenue situations, or both situations.

Object Code T09. An expenditure classification category established by the Office of the Comptroller in MMARS. This object code will be used for accounting and reporting of all contingency contracts executed pursuant to 815 CMR 8.00.

Request for Proposals. The Request for Proposals (RFP) is a solicitation process

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organized to stimulate competitive interest in the award of a contingency contract.

Revenue. Income earned by the Commonwealth for services provided. Only revenue actually received and confirmed by a Treasury cash receipt is available for measuring revenue for contingency payments.

Secretariat. The executive office in the executive branch of government established pursuant to M.G.L., chs. 6A and 7 with responsibility and authority to direct and coordinate the activities of specified departments. Many, but not all, departments in the executive branch are organized under the supervision of secretariats. In those instances where a cognizant secretariat does exist, the secretariat has a special interest in the design and implementation of programs in a manner that allows opportunity for federal financial participation and other reimbursement. A secretariat is also a department.

Single State Agency. A department formally designated by the Governor to the federal government as the one cognizant department on behalf of the state in the management of specified federally assisted programs. In a few instances there is allowed under the law a designation of two "single state agencies". The single state agency has authority and responsibility to operate programs, either directly through its own organizations or through other state departments or organizations, in a manner that complies with both state and federal law.

### 8.03: Procurement

(1) All contingency contracts executed pursuant to 815 CMR 8.00 shall be awarded based on an RFP that evidences competitive procurement, unless there is a specific written exception made by the Comptroller.

(2) The Comptroller may determine that it is in the best interests of the Commonwealth to make an exception to the normal RFP and competitive procurement process. In rendering this judgment, the Comptroller will rely on criteria such as:

- (a) the unique qualification of the proposed vendor for the contingency contract,
- (b) an extension or addition to work underway so that a substantial economy is accomplished.

(3) All RFPs for contingency contracts must be authorized by the Office of the Comptroller. Management of the procurement process can take several forms:

- (a) Directly by OSC.
- (b) Jointly issued by OSC and one or more operating departments.
- (c) Directly by an operating Department which has specific written

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authorization from the Comptroller.

(4) Each RFP process will expressly indicate in writing the evaluation criteria and the names of the members of the selection committee. When the Office of the Comptroller expressly authorizes in writing an RFP to be initiated and completed by other departments, it will specifically approve in writing the evaluation criteria and the members of the selection committee prior to RFP issuance. When the Comptroller's office is issuing the RFP under its own authority or as a member of a joint venture, such separate written approvals will not be required.

(5) No contingency contract shall constitute legal obligation of the Commonwealth unless it complies with procurement requirements as established in 815 CMR 8.00.

(6) In the RFP process, specific attention will be given to evaluation and selection criteria that are designed to promote participation by small business enterprises, minority business enterprises, women owned business enterprises, and business enterprises primarily located in Massachusetts. Each RFP should strive to promote reasonable and maximum participation by such enterprises.

### 8.04: Contract Terms and Conditions

(1) The Office of the Comptroller will furnish "standard" contract terms and conditions to be used for all contingency contracts. Also the Comptroller's office will furnish "standard" terms and conditions to be used in each Interdepartmental Service Agreement required to support a contingency contract. Any modification to such standard terms and conditions requires the prior written approval of the Comptroller.

(2) Contingency contracts, or Interdepartmental Service Agreements relating to contingency contracts, must be personally signed by the Comptroller. In a situation where the Comptroller's office is a party to a joint venture, the Comptroller will co-sign the contract after the signatures of relevant department heads, as members of the joint venture, are obtained. In a situation where the Comptroller's office had delegated in writing the authority to issue an RFP to other departments, the Comptroller will evidence final approval to such contracts by personally signing the documents prepared by those parties. It is expected that a typical contingency contract may thus demonstrate multi-party participation and have requisite signatures from departments and the Comptroller's office.

(3) All contingency contracts will specify the maximum obligation of the Commonwealth to the outside party. In addition to maximum obligation, contingency contracts may specify compensation as a percent of the increase of federal financial participation or other reimbursement only over the measurement

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basis. It is expected that most contingency contracts will be structured as a percent of the increase of federal financial participation or other reimbursement only over the measurement basis not to exceed the maximum obligation; however in some cases fee for service arrangements may be appropriate. Within the compensation structure, a differential set of percentages related to differential increments over the measurement basis is allowable.

(4) All contingency contracts, including multi-year contracts will specify additional elements including but not limited to:

- (a) the time period for which the project or engagement will be undertaken,
- (b) the time period against which the measurement basis used to calculate the increased revenue associated with the contingency contract is applied,
- (c) an explicit (and if possible quantified) definition of the measurement basis for the contingency contract,
- (d) an explicit (and if possible quantified) reference to the expectations for base revenues and maximized revenues associated with the program for which the contingency engagement is being undertaken,
- (e) specific performance criteria and definitions and timing of deliverables by the outside party,
- (f) specific criteria to determine the acceptance by the department of each deliverable,
- (g) an estimate of the increased revenue by source,
- (h) assignments of key personnel to be made by the vendor and
- (i) procedures for resolving future period disallowances.

(5) Each contingency contract can include as a deliverable:

- (a) the study of a program to evaluate and identify possible situations for federal or other revenue maximization,
- (b) a project to implement results of such studies,
- (c) a combination of studies and implementation projects. All implementation projects must follow a study as described in 815 CMR 8.04(5)(a).

(6) Contingency contracts determined by the Comptroller to be fiscal conduits are prohibited. Decisions as to the applicability of the prohibition to fiscal conduits shall be made by the Comptroller and the determination of the Comptroller in this matter will be conclusive. The Comptroller's Office may also issue supplementary guidance and individual interpretations in this matter.

(7) Compensation will be paid to the outside party under a contingency contract or related interdepartmental service agreement after certification by the department, and approval by the Comptroller's Office, of both of the following steps:

- (a) it is determined that increased revenue over the measurement basis has been collected and such collection is confirmed through deposit to a bank account

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with the State Treasury, and

(b) it is determined that a specified deliverable in the contract has been accepted. The amount of compensation to be paid after accomplishment of these steps will be governed by contractual terms.

(8) Each contingency contract will contain explicit written directives to be applied in those circumstances, if any, when action outside the contracted time frame causes a change to the amount calculated under the measurement base. It is recognized that actions in a future period, may be applied retroactively and thus cause a change to amounts previously calculated under the measurement basis. An example of a possible future change that would decrease the initial measurement basis is the retroactive application of an audit disallowance; an example of a possible future change that would increase the initial measurement basis in the retroactive application of a rate increase. Each contingency contract must have written directives that will govern the effect of such changes on the measurement basis and thus on the compensation to the outside party.

### 8.05: Contract and Project Management and Supervision

(1) The Office of the Comptroller may provide detail contract and project management and supervision to projects performed pursuant to contingency contracts.

(2) The Comptroller may also delegate in writing the authority and responsibility for contract and project management and supervision to any other signatory to a contingency contract. This delegation may not be made to an entity that is not a state department and not a signatory to the contingency contract. Criteria to be used by the Comptroller to delegate contract management and supervision include but are not limited to:

- (a) efficiency of operations,
- (b) complexity of program and policy implications and
- (c) encouragement of interdepartmental cooperation.

(3) Any department performing contract and project management and supervision will provide progress and status reports in a form and at intervals as specified by the Comptroller. These specifications may be tailored by the Comptroller to suit the requirements of individual contingency contracts. Non-performance by a department of the specified requirements for such reporting will be grounds for the Comptroller to revoke the delegation of contract and project management and supervision. If this circumstance arises, the Comptroller may delegate responsibility to another signatory to the contract or assume the responsibility directly to the Comptroller's Office. The Comptroller shall determine satisfactory performance and such determination shall be conclusive.

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### 8.06: Accounting Procedures

(1) The Office of the Comptroller will establish all funds, subfunds, revenue accounts, and expenditure accounts, including retained revenue accounts, to implement each contingency contract executed pursuant to 815 CMR 8.00. The Office of the Comptroller may establish new accounts or other accounting mechanisms as necessary in order to assure proper distinction between revenue and expense operations associated with contingency contracts and revenue and expense operations not associated with contingency contracts.

(2) Approval of the Office of the Comptroller will be required for all specific transactions by which revenues over the measurement basis associated with contingency contracts are accounted to specified accounts. This approval may be done on an item by item basis, summarized basis, or by other method as determined by the Comptroller.

(3) Approval of the Office of the Comptroller will be required for all specific disbursement transacting to any party from any account which includes deposits pursuant to the prior section. This approval may be done on an item by item basis, summarized basis, or by other method as determined by the Comptroller.

(4) At the conclusion of each fiscal year, the Comptroller shall report to the Legislature, the Fiscal Affairs Division, and each department which is a party to a contingency contract, the status of revenues and expenses associated with contingency contracts. Such reports will also include any additional comments or suggestions that the Comptroller finds relevant to the contingency contracts. Such additional comments will include but not be limited to:

- (a) vendors with whom the Commonwealth has engaged in contingency contracts operative during that fiscal year,
- (b) summarized amounts of revenues received and expenses paid as a result of such contingency contracts in that fiscal year and
- (c) recommendations for the disposition of residual balances, if any, of revenues in excess of expenses associated with contingency contract.

### 8.07: Appeals Process

(1) Appeals may be made by a Contractor to the Office of the General Counsel relative to a Department's application of the measurement basis.

(2) The Contractor shall forward a letter outlining the basis for the appeal and all relevant supporting documentation.

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(3) The Office of the General Counsel, following review of the file submitted by the Contractor and the Department's response, shall within 15 days notify the Contractor and the Department of the decision on the appeal.

(4) Any party aggrieved by that decision may, within ten days appeal it to the Comptroller who shall within ten days, render the final agency decision which shall not be subject to administrative appeal.

### REGULATORY AUTHORITY

815 CMR 8.00: M.G.L. c. 29, § 29E

Effective: 12/29/01

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### 815 CMR 9.00: COLLECTION OF DEBTS

#### Section

- 9.01: Purpose, Application and Authority
- 9.02: Definitions
- 9.03: Availability of Debt Collection Services
- 9.04: Procurement of Statewide Contract for Debt Collection Services
- 9.05: Department Internal Debt Collection Obligations
- 9.06: Intercept of Debt by Office of the Comptroller
- 9.07: Department Procedures to Retain Debt Collection Services
- 9.08: Accounting Procedures and Collection Agency Payments
- 9.09: Disputes
- 9.10: Severability

#### 9.01: Purpose, Application and Authority

(1) Purpose. 815 CMR 9.00 governs the collection of non-tax revenue accounts receivable and debts owed to the State and not otherwise provided for by law. 815 CMR 9.00 provides State Departments with access to services that promote the efficiency and effectiveness of collecting debts owed to the State, thereby enhancing its non-tax revenues. 815 CMR 9.00 provides both for interdepartmental assistance from the Office of the Comptroller to intercept State payments due to debtors and for procurement and contract management of contingent fee contracts for debt collection services.

(2) Application. 815 CMR 9.00 applies to all State Departments seeking to collect non-tax revenue accounts receivable and debts owed to the State, including agencies, subdivisions, offices, boards, commissions, committees, councils, boards or institutions of the Executive Department, the Institutions of Higher Education, the Judicial and Legislative Branches and Constitutional Offices. The Office of the Comptroller will interpret 815 CMR 9.00 and take any actions necessary to carry out the purposes of 815 CMR 9.00 including waivers or amendments of these provisions, issuing additional policies, procedures and forms to be used by Departments. Absent separate statutory authority, no Department may intercept payments owed debtors, or enter into a contract for debt collection services except as provided in 815 CMR 9.00. Departments seeking to use intercept and debt collection services for the discharge of debts and accounts receivable must use the State accounting system or other appropriate system as prescribed by the Comptroller.

(3) Authority. 815 CMR 9.00 is promulgated under the authority of M.G.L. c. 29, § 29D, M.G.L. c. 7A, § 3, § 8 and § 15, and M.G.L. c. 62D.



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### 9.02: Definitions

Accounts Receivable. Revenues earned but not yet collected for legislatively authorized charges for services performed, goods provided, or events, such as judgments and recoveries, fines, fees for licenses and permits, charges for services, investment income, operating leases or any other obligations owed to and being pursued for collection by a Department. Accounts receivable shall also include, but are not limited to loans, notes and amounts due from employees, other State Departments, cities, towns and political subdivisions of the State and from Federal government grants and contracts. An accounts receivable that is unpaid by the due date of its initial billing shall be considered a "debt".

Affidavit. A certification by a Department Head that the name of the debtor, the amount of the debt and the existence of a debt are accurate. The Comptroller shall designate how a Department Head will meet the requirement of providing an affidavit certifying that a debt is accurate.

Aging. A systematic method of classifying and reporting the number of days between the initial origination date of a bill and the date that the payment of the bill is due.

Attorney General (also referred herein as "AGO"). The Office of the Attorney General of the State, established by M.G.L. c. 12, § 1.

Audit Trail Reports. Reports produced from data in the official State accounting system. The Comptroller shall from time to time designate certain reports as audit trail reports and such reports shall be relied upon for audit and other purposes.

Bad Debt. An outstanding debt, obligation or liability to pay or return something to the State that remains uncollected after all available efforts to collect have been exhausted. For the purposes of 815 CMR 9.00, "bad debt" may also be referred to as an "uncollected receivable".

Collection. An action taken by a Department to satisfy a legislatively authorized account receivable.

Collection Accounts Contract. A contract issued by the Office of the Comptroller which is used by a Department to obtain the services of an Authorized Collection Agency to collect a debt.

Collection Agency. A duly licensed entity which has been authorized under a Statewide Contract assist Departments in collection efforts for non-tax revenue, for

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a Contingent Percentage Fee of debts actually collected and recorded on the state accounting system.

Contingent Percentage Fee. A payment under which a Collection Agency is paid a percentage fee "contingent" on the amount of delinquent accounts receivable collected by the Collection Agency that is remitted to the Department and recorded in the state accounting or other appropriate accounting system.

Debt. An outstanding account receivable, obligation or other liability to pay or return something to the State.

Debtor. An individual, sole proprietor, corporation, partnership, organization, business trust or association or two or more persons, or other legal entity which owes an accounts receivable, obligation or other liability to pay or return something to the State.

Delinquent Account Receivable. An account receivable owed the State which remains unpaid on the day following its payment due date. Delinquent accounts receivable may also be referred to as "debts".

Department. State agencies, subdivisions, offices, boards, commissions, committees, councils, boards or institutions of the Executive Department, the Institutions of Higher Education, the Judicial and Legislative Branches and Constitutional Offices, and any other eligible entity approved by the Office of the Comptroller.

Discharge. The dissolution of a debt, either through full payment, intercept, settlement or write-off.

Disputed Debt. Occurs when a debtor notifies a Department that there is a disagreement as to the identity of the debtor, the amount or the existence of a debt.

Due Date. The date when payment of an account receivable is due, usually 30 calendar days from the date an accounts receivable event occurs or its billing date; or as established by contractual terms or statute.

Dunning Notice. A written notice appearing on an invoice or statement mailed or personally delivered to a debtor providing notice that payment for an account receivable or a debt is past due.

Intercept. An action performed by the Office of the Comptroller to discharge a delinquent debt owed the State from other funds owed or scheduled to be paid to a debtor, including tax refunds pursuant to M.G.L. c. 62D.

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**Judgment.** A court order ruling that the debtor is obligated to pay the State a specific sum.

**Maximum Obligation.** The limit of a Department's or Eligible Entity's potential financial obligation to a Collection Agency under a Collection Accounts Contract. The State shall not be obligated for any amounts incurred by a Collection Agency which exceed the maximum obligation identified in a Collection Accounts Contract.

**Non-Tax Revenue.** Funds derived as a result of legislatively authorized fines, fees, licenses, permits, assessments, third party payments, interest, overpayments and other accounts receivable owed the State with certain exceptions such as revenues from taxes, lottery operations and State investments.

**Payment Plan Agreement.** A written installment plan for collecting an outstanding debt agreed to by a Department and debtor.

**Revenue.** All amounts due and collected from State taxes, agency fees, fines, assessments, charges, and other Departmental revenues, retained revenues, federal grants, federal reimbursements, lottery receipts, court judgments and investment earnings.

**Settlement.** Upon certification by the Department Head and approval by the Office of the Comptroller, an agreement between the Department and a debtor to accept partial payment of a debt as full and final discharge of the debt.

**State.** The Commonwealth of Massachusetts.

**Statewide Contract.** A contract executed by authorized collection agencies and the Office of the Comptroller for the provision of debt collection services on behalf of all Departments. Collection Agencies agree to provide debt collection services in return for a specified Contingent Percentage Fee based upon the amount of delinquent accounts receivable collected by the Collection Agency that is remitted to the Department and recorded in the state accounting system or other appropriate system approved by the Comptroller.

**Uncollected Receivable ("Bad Debt").** A debt which, after unsuccessful attempts at collection by a Department, is deemed uncollected by the Comptroller.

**Write-Off.** A transaction performed by the Office of the Comptroller removing an uncollected receivable from the State's financial records.

### 9.03: Availability of Debt Collection Services

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The debt collection services provided pursuant to 815 CMR 9.00 shall be available for debts owed to a Department of a non-tax revenue nature, including but not limited to legislatively authorized fines, fees, licenses, permits, interest income, assessments, third party payments, and any other type of receivable that is capable of being collected with the exception of revenues specifically governed by separate statutes such as revenues from taxes, lottery operations, State investments, federal grants and reimbursements and Medicaid vendor overpayments. Collection Agencies shall conduct debt collection services in accordance with 815 CMR 9.00, 209 CMR 18.00 and 940 CMR 7.00, and any other state or federal laws governing the collection of debts.

### 9.04: Procurement of Statewide Contract for Debt Collection Services

(1) Procurement. A Statewide Contract Debt Collection Services shall be procured by the Office of the Comptroller in accordance with applicable procurement requirements.

(2) Litigation Services-Approval by Office of the Attorney General. As part of the procurement process, potential Contractors may be required to identify lawyers who will provide litigation services. A Collection Agency's lawyer(s) must be designated Special Assistants Attorney General (SAAG's) by the Attorney General's Office before any litigation services may be provided. If SAAGs will be required as part of the Statewide Contract, final awards of Statewide Contract for Debt Collection Services will be subject to the review and SAAG designation of a contractors legal staff by the Office of the Attorney General.

### 9.05 Department Internal Debt Collection Obligations

(1) Obligation to Pursue Legislatively Authorized Accounts Receivable and Debts. Departments are responsible for making diligent efforts to collect legislatively authorized accounts receivable and debts due the State. Departments shall maintain detailed records for all accounts receivable, debts and other legislatively authorized charges for goods or services. Departments shall also maintain records of all damages or other monetary losses sustained by the Department.

(2) Internal Department Collection Efforts. A Department must comply with the following provisions outlining internal debt collection activities prior to the automatic assignment of a debt to the Office of the Comptroller for intercept and the assignment of the debt to a Collection Agency for collection:

(a) Location Assistance. If a Department can not locate the debtor to serve notice of a debt, the Department shall seek location assistance as prescribed by the Office of the Comptroller.

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(b) Disputed Debts and Hearings. The procedures and time periods outlined in 815 CMR 9.05(2) shall be suspended at any time the Department receives written notice from a debtor of a disputed debt or a written request for a hearing. Departments shall comply with M.G.L. c. 30A, M.G.L. c. 66A, 801 CMR 1.00 and 801 CMR 3.00 when conducting a hearing that has been timely requested in writing by a debtor. The suspension of debt collection activities shall continue until the Department has completed a hearing, if one has been timely requested in writing by the debtor, or until the dispute is resolved between the Department and the debtor. If a hearing has not been timely requested in writing by the debtor, and the Department determines that the debtor's dispute is not supported by credible evidence, the Department may remove the suspension and continue with the debt collection activities.

(c) Initial Billing. A Department must transmit an initial bill to a debtor. The bill must include the name of the debtor, the authorized accounts receivable being charged, the amount of the bill, the date the bill was issued, the date that payment is due before it is considered delinquent and procedures for remittance of payment. Departments are responsible for ensuring and certifying the accuracy of the information contained in the bill.

(d) Dunning Notices. If the initial bill is not paid in full by the debtor by the payment due date, and the debt has not been disputed by the debtor, a Department must demonstrate diligent efforts to collect the debt. Diligent efforts shall include at a minimum, but shall not be limited to, three written billing and dunning notices in addition to the initial billing, and a final notice as follows:

1. 01 days past due dunning notice;
2. 30 days past due dunning notice;
3. 60 days past due dunning notice;
4. 90 days past due final notice.

(e) Notice Requirements. Language informing the debtor of the following items must be contained in each of the three dunning notices outlined in 815 CMR 9.05(2)(d):

1. Due Process Notice. Notice to the debtor of the right to either dispute the debt, or make a timely written application for a hearing under M.G.L. c. 30A, within 15 business days from the date of the notice.
2. Notice of Discharge of the Debt Through Intercept. Notice that the debt remains unpaid, and the debtor fails to dispute the debt or request a hearing, that the debt will automatically be assigned to intercept from any other State payments that are due to the debtor, or scheduled to be paid to the debtor, including tax refunds under M.G.L. c. 62D.
3. Notice of Intent to Assign a Debt to a Collection Agency. Notice that the debt may be assigned to a Collection Agency for collection.

(f) Final Notice. The final 90 days past due notice outlined in 815 CMR 9.05(2)(d)4. shall contain language notifying the debtor that the debt has been

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referred for either intercept or to a Collection Agency for collection, or both.

(3) Payment Plans. A Department shall have the option, at any time during the debt collection process, to offer a debtor a payment plan to discharge a debt. A Department shall determine the terms and conditions for payment plans and may revoke a payment plan and continue the debt collection process at any time a debtor fails to timely meet a deadline for payment. A Department shall also enforce any court or administratively mandated payment plans.

(4) Fast Track to Attorney General's Office. At any point in the collection process when the Department has reason to believe the assistance of the Office of the Attorney General is essential to the successful collection of the debt, the Department may make contact the Office of the Comptroller to make a request for Attorney General assistance.

(5) Confidentiality of Debt Collection Information. Since debt and debtor information is of a highly personal nature, Departments are required to keep all information related to debts and debtors confidential. Departments are responsible for training staff to ensure that no information about any debt or debtor is disclosed for any reason except as authorized herein. Departments may allow access to debt and debtor information only to those staff necessary to process debt related transactions and correspondence. Departments are responsible for taking the necessary precautions to ensure the security of all files, systems and other filing or storage locations of debt and debtor information.

### 9.06: Intercept of Debt by Office of the Comptroller

(1) Certification of Accuracy of Debts. A Department shall be responsible for verifying and certifying the accuracy of the name of any debtor and the amount of the debt. A Department must verify the accuracy of any debts identified in audit trail or other reports designated by the Office of the Comptroller for accounts receivable and debt collection management. The Department is responsible for immediately correcting any inaccurate data contained in designated audit trail or other reports for debt collection activities.

(2) A Department will have at least four opportunities over a 120 day period during its internal collection process to verify the accuracy of the debts State accounting system audit trail or other reports at the end of this period shall be considered by the Comptroller to be an affidavit by the Department Head that the debts which are automatically assigned for intercept at the Office of the Comptroller are accurate.

(3) Suspension of Collection Efforts for Disputed Debts. A Department must immediately suspend the debt collection process for any disputed debt, or whenever

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a written request for a hearing has been timely submitted. A Department must suspend any debt that can not be confirmed a certified as accurate. Unsuspended debts processed through the state accounting system will automatically be assigned to the Office of the Comptroller for intercept when the debt is 120 days past due. Therefore, a Department must suspend any debt that cannot be confirmed and certified as accurate. A debt that is automatically assigned to the Office of the Comptroller shall be deemed certified by the Department Head as accurate.

(4) Procedures for Exempting Certain Debts or Payments from Intercept. Departmental requests may be made to the Office of the Comptroller to exempt certain debts or types of payments from the intercept process will be reviewed on a case by case basis.

(5) Simultaneous Submission of Debt for Intercept and Debt Collection. Unsuspended debts processed through the state accounting system will automatically be assigned to the Office of the Comptroller for intercept when the debt is 120 days past due. Unless otherwise specified by the Department submitting the debt, all debts submitted for debt collection are simultaneously submitted to intercept and debt collection. Authorized Collection Agencies have the right to refuse and return debts to the submitting Department until intercept efforts are completed. Authorized Collection Agencies may only be compensated for fees from debt funds which the agencies actually collect and deposit as prescribed by the Office of the Comptroller. Therefore, Authorized Collection Agencies that accept a debt that has been submitted simultaneously for intercept and debt collection assume the risk that the debt will be successfully intercepted in whole or in part by the Office of the Comptroller prior to the Agency's collection of the debt. In such event, the Agency shall not be entitled to any compensation for debt collection work performed.

(6) The Department and the Office of the Comptroller shall determine how long a debt will remain subject to intercept, and if debt collection is unsuccessful, if a debt should be discharged through a settlement or write-off.

### 9.07: Department Procedures to Retain Debt Collection Services

(1) Only Collection Agencies awarded Statewide Contracts pursuant to 815 CMR 9.04 are authorized to provide debt collection services for Departments. Departments must complete the internal collection activities outlined in 815 CMR 9.05 prior to assigning a debt to a Collection Agency.

(2) Collection Accounts Contract Requirements.

(a) Collection Accounts Contract. The Office of the Comptroller will publish a Collection Accounts Contract that will be used by Departments to retain a

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Collection Agency's services.

(b) Effective Date and Duration of a Collection Accounts Contract. A Collection Agency may not begin services, and a Department may not assign any debts, until the parties have executed a Collection Accounts Contract and it has been filed with the Office of the Comptroller. The duration of any Collection Accounts Contract shall not exceed the duration of the Statewide Contract, including any approved extensions.

(c) Scope of Services. The Collection Accounts Contract shall include a full and detailed description of the scope of services to be rendered by the Collection Agency including any minimum and mandatory requirements, specific criteria and standards for evaluating the Collection Agency's performance in relation to desired outcomes or objectives and provisions related to:

1. events or facts creating or concerning the assigned accounts receivable;
2. the type of account (consumer, commercial, third party or other);
3. the aging of the delinquent accounts receivable (not less than 120 days);
4. the amount or balance of the accounts to be assigned;
5. procedures for deposit of receipts;
6. the approved contingent percentage fee schedule applicable to the accounts;
7. the total amount of the debt which includes the amount of the debt and the Contingent Percentage Fee rate to be paid to the Collection Agency;
8. procedures for compensation;
9. procedures for monitoring litigation undertaken by the Collection Agency on behalf of the Department; and,
10. whether or not the debt is being submitted simultaneously for intercept and debt collection.

(d) Contingent Percentage Fees. Only the Contingent Percentage Fee rates approved in the award of a Statewide Contract may be incorporated into a Collection Account Contract as the "budget". Any payments made under a Collection Accounts Contract are contingent upon and subject to the Collection Agency's successful collection of the accounts receivable in accordance with the terms and conditions of the Collection Accounts Contract and the Statewide Contract. Whenever possible, the Department shall add the Contingent Percentage Fee rate to the amount of the debt to be collected by the Collection Agency. Unless otherwise provided by law, or as authorized in the Statewide Contract, no Contingent Percentage Fee payments shall be made for any debt collection services, including litigation services, that do not result in the collection of an accounts receivable.

(e) Litigation Services. Collection Agency litigation services are considered one type of available debt collection services. Collection Agencies may have a separate Contingent Percentage Fee rate approved for debt collection including litigation services, and debt collection without litigation services. Litigation services provided by the Collection Agency may not be separately billed or



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charged to the Department or added to the debt.

(f) Contract Managers. The Department and the Collection Agency shall each designate a contract manager for the Collection Accounts Contract. The contract manager for the Department shall be responsible for assisting the Office of the Comptroller in processing all transactions involved with the debt collection services, revenue receipts, refunds and payments to the Collection Agency. The Department contract manager shall be responsible for monitoring the Collection Agency's compliance with all terms of the Collection Accounts Contract. The Collection Agency's contract manager shall be responsible for monitoring all debt collection activities of the Collection Agency on behalf of the Department and providing any periodic reports or other information requested by the Department.

(4) Litigation Managers. A Department's Legal Counsel and the AGO shall be responsible for monitoring the litigation efforts undertaken on behalf of the State by Collection Agency SAAGs who have been approved by the AGO. Litigation by SAAGs may be undertaken only with the prior written approval of the Department.

(5) Partial Discharge or Write-Off. Collection Agencies shall not negotiate or settle a partial discharge of a debt except as instructed by the Department. Collection Agencies shall refer all uncollected debts to the Department for consideration for Write-Off or further action. Upon written notice to the Collection Agency, a Department may recall assigned accounts receivable or demand a temporary or permanent halt to collection activity by the Collection Agency.

(6) Department and Eligible Entity Accounts Receivable Management. It shall be a Department's responsibility to verify all accounts receivable returned by the Collection Agency and disputed by the debtor, during which time the Collection Agency shall cease contact with the debtor and the Department shall comply with the provisions of 815 CMR 9.05(2)(b).

(7) Settlement. Neither the Department nor the Collection Agency has authority to independently negotiate a settlement of a debt. In the event a Department determines that partial settlement of a debt is the most appropriate action, the Department shall request approval to negotiate a settlement of the debt from the Office of the Comptroller. Upon approval from the Office of the Comptroller the Department may instruct the Collection Agency to pursue settlement.

(8) Write-Off. Neither the Department nor the Collection Agency has authority to Write-Off bad debts. Bad debts must be referred directly to the Office of the Comptroller for Write-Off by the Department. Collection Agencies may not refer any debt directly to the Office of the Comptroller. The Department shall file necessary evidence and reports with the Office of the Comptroller certifying the bad

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debt and that diligent efforts have been made to collect the debt. The Office of the Comptroller may delegate Write-Off authority to Departments which have demonstrated sound business practice in their management of receivables, debt collection, and requests for write-offs as measured by adherence to Office of the Comptroller policy and procedures. This authority may not be delegated to a Collection Agency.

(9) Attorney General's Office: Litigation. The Attorney General may litigate debts owed the state, including but not limited to instances of multiple or chronic indebtedness to the state, cases involving several departments, cases in which the amount owed is of sufficiently large amount to warrant action by the Attorney General, and cases of suspected fraud. Referral of cases to the Office of the Attorney General shall be made only by the Comptroller. In such cases, the Department shall file necessary evidence and reports with the Office of the Comptroller in support of said referral.

(10) Office of the Comptroller Management of State Debt Collection Services. Pursuant to 815 CMR 9.00, the Office of the Comptroller shall be responsible for the oversight of debt collection activities in the State. The Comptroller shall take such actions as are necessary for the management of accounts receivable and debt collection activities by Departments. A Department's nonperformance or insufficient performance of the requirements of 815 CMR 9.00 will be grounds for revocation of the Department's authority to enter into Collection Accounts Contracts. The Comptroller may then delegate this authority to another Department or assume the responsibility directly.

### 9.08: Accounting Procedures and Collection Agency Payments

(1) All revenue collected for debts under 815 CMR 9.00 during the initial billing, dunning, intercept or debt collection process shall be recorded and processed through the state accounting system as prescribed by the Office of the Comptroller. The Office of the Comptroller will take all necessary steps to establish funds, subfunds, revenue accounts, expenditure accounts, retained revenue accounts and any other action necessary to support the collection of debts.

(2) Approval of the Office of the Comptroller is required for all transactions by which revenues collected under a Collection Accounts Contract are accounted to specified accounts in the state accounting system or other approved system.

(3) Approval of the Office of the Comptroller is required for all contingent percentage fee payments to a Collection Agency based upon successful collections of accounts receivable. No other payments may be made to a Collection Agency absent Office of the Comptroller prior written approval.

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### 9.09: Disputes

All Statewide Contract or Collection Accounts Contract negotiations and disputes between a Department and a Collection Agency shall be resolved by the Department. The Department and the Collection Agency must make reasonable efforts to resolve the dispute within 30 days using all appropriate mechanisms, but in no event shall this resolution period extend beyond the 30th day of June in any fiscal year. If a Department and a Collection Agency are unable to resolve a dispute after reasonable efforts, either party may seek assistance from the Office of the Comptroller to resolve the dispute.

### 9.10: Severability

If any provision of 815 CMR 9.00 is found to be illegal, unenforceable or void, then Departments and Contractors shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

## REGULATORY AUTHORITY

815 CMR 9.00: M.G.L. c. 29, § 29D; c. 7A, § 3, §8 and § 15, and c. 62D

Effective: 8/31/01

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### 815 CMR 10.00: RECORDS MANAGEMENT OF BILLS, VOUCHERS AND CONTRACTS

#### Section

10.01: Purpose, Application and Authority

10.02: Definitions

10.03: Records Management of Bills, Vouchers and Contracts

#### 10.01: Purpose, Application and Authority

(1) Purpose. The purpose of 815 CMR 10.00 is to provide all State Departments with rules and procedures for filing the Record Copy of Bills, Vouchers and Contracts. The Comptroller shall issue policy memoranda identifying the acceptable medium for maintaining Record Copies (*e.g.*, paper, electronic, microfiche, microfilm, tape, CD-ROM *etc.*)

(2) Application. 815 CMR 10.00 applies to all State Departments including agencies, subdivisions, offices, boards, commissions or institutions within the Executive, Judicial and Legislative Branches. The Office of the Comptroller will interpret 815 CMR 10.00 and take any actions necessary to carry out the purposes of 815 CMR 10.00, including issuing additional policies, procedures and forms to be used by Departments.

(3) Authority. 815 CMR 10.00 is adopted under the authority of M.G.L. c. 7A, §§ 5, 7, 8, and 15.

#### 10.02: Definitions

Bill. An invoice, statement or other demand for payment submitted to a Department requesting payment on a contract or other legal obligation of the Commonwealth. Bills shall include any accompanying supporting documentation.

Contract. Any State contract, any grant pursuant to 815 CMR 2.00, any interdepartmental service agreement (ISA) or interdepartmental chargeback pursuant to 815 CMR 6.00, and any other agreement or obligation upon which money is payable from the treasury, as determined by the Comptroller.

Delegation of Transaction Authority. The grant of authority from the Office of the Comptroller (CTR) and the Operational Services Division (OSD) allowing a Department to process an encumbrance or payment in the State Accounting System without secondary review by CTR or OSD.

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Department. All State Departments including agencies, subdivisions, offices, boards, commissions or institutions within the Executive, Judicial and Legislative Branches.

Office of the Comptroller (CTR). The office created under M.G.L. c. 7A which is responsible for prescribing the forms, books of account and method of keeping and rendering accounts in the state accounting system pursuant to M.G.L. c. 7A, §§ 7 and 8, and which is charged with prescribing the medium and location of the Record Copy of Bills, Vouchers and Contracts pursuant to M.G.L. c. 7A, § 5.

Operational Services Division (OSD). The office created pursuant to M.G.L. c. 7, § 4A which is charged with oversight of commodity and service purchases pursuant to M.G.L. c. 30, §§ 51 and 52, and M.G.L. c. 7, §§ 4A and 22.

Public Records. Public records as defined by M.G.L. c. 4, § 7, M.G.L. c. 66, and 950 CMR 32.00.

Quality Assurance Program. A program implemented by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) to assist Departmental compliance with state finance law and Commonwealth expenditure policies and procedures including but not limited to procurement and contracting, encumbrance management, timely bill payment, internal controls and records management.

10.02: continued

Record Copy. The original, certified copy, or other medium prescribed by the Comptroller, of a Bill, Voucher or Contract and all supporting documentation associated with that Record Copy. The Record Copy shall be considered the official and complete document of any Bill, Voucher or Contract. The Comptroller shall issue policy memoranda prescribing the mediums for maintaining Record Copies (*e.g.*, paper, electronic, microfiche, microfilm, tape, CD-ROM *etc.*) which must be accessible and capable of reproduction. Record Copies (irrespective of medium) must be retained according to the disposal schedules issued by the Records Conservation Board. The medium in which the Record Copy is maintained shall not affect the length the Record Copy is retained according to the disposal schedule.

Records Conversation Board. The Board created pursuant to M.G.L. c. 30, § 42.

Records Disposal Schedule. A schedule established by the Records Conservation Board pursuant to M.G.L. c. 30, § 42 prescribing the standards for management and preservation of records and schedules for the destruction, in whole or in part, and transfer to the archives or another appropriate division within the office of the state secretary, of records no longer needed for current business.

State. The Commonwealth of Massachusetts.

Voucher. A document used to substantiate and make a payment under the State Accounting System or as otherwise determined by the Comptroller.

10.03: Records Management of Bills, Vouchers and Contracts

(1) Department Maintenance of Record Copies. Departments shall maintain the Record Copy of the following documents in accordance with 815 CMR 10.00 and any policies and procedures issued by the Office of the Comptroller:

- (a) all Bills and Vouchers on which money has been paid or will be paid from the Treasury upon the certificate of the Comptroller or warrant of the Governor; and
- (b) all Contracts under which money may be payable from the Treasury.

(2) Repository of Record Copies. Departments shall maintain Record Copies of the documents identified under 815 CMR 10.03(1) at:

- (a) a central Department location, or
- (b) if the Department maintains Record Copies at multiple locations, the Department shall maintain a centralized list of the repository location of all Record Copies.

(3) Chief Fiscal Officer is Record Copy Keeper. The Chief Fiscal Officer (CFO) for a Department will be the official Record Copy Keeper and shall be responsible for management of Record Copies within their Department in accordance with 815

## 815 CMR: COMPTROLLER'S DIVISION

CMR 10.00 and policies and procedures published by the Office of the Comptroller and the Records Conservation Board, and shall be the central contact for inquiries concerning Record Copies.

(4) Department Compliance with Public Records Requests. Departments shall be responsible for complying with all Public Records requests concerning Record Copies maintained at the Department under 815 CMR 10.00.

(5) Public Record Disclosure of Unofficial Copies of Contracts. Copies of Contracts which are submitted to the Office of the Comptroller (CTR) or the Operational Services Division (OSD) for review when processing certain state accounting system transactions are considered Public Records. Any copies provided pursuant to a Public Records request will be identified as unofficial copies and Public Record requesters will be referred to the Department Record Copy keeper for the official Record Copy of the Contract.

(6) Access to Record Copies. Departments shall provide the Office of the Comptroller, the State Auditor's Office and the House and Senate Committees on Ways and Means with full access to any Record Copies under 815 CMR 10.00. Departments shall also provide the Operational Services Division with full access to Record Copies under 815 CMR 10.00 for Contracts which are subject to its oversight.

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10.03: continued

(7) Quality Assurance Review. As part of the Quality Assurance Program, the Office of the Comptroller will review compliance with records management requirements under 815 CMR 10.00. Records management performance will be a consideration when determining Delegation of Transaction Authority.

(8) Departments may request assistance from the Office of the Comptroller to resolve any dispute or to provide a determination as to the application or interpretation of 815 CMR 10.00.

### REGULATORY AUTHORITY

815 CMR 10.00: M.G.L. c. 7A, §§ 5, 7, 8, and 15

Effective: 5/25/01